TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 360

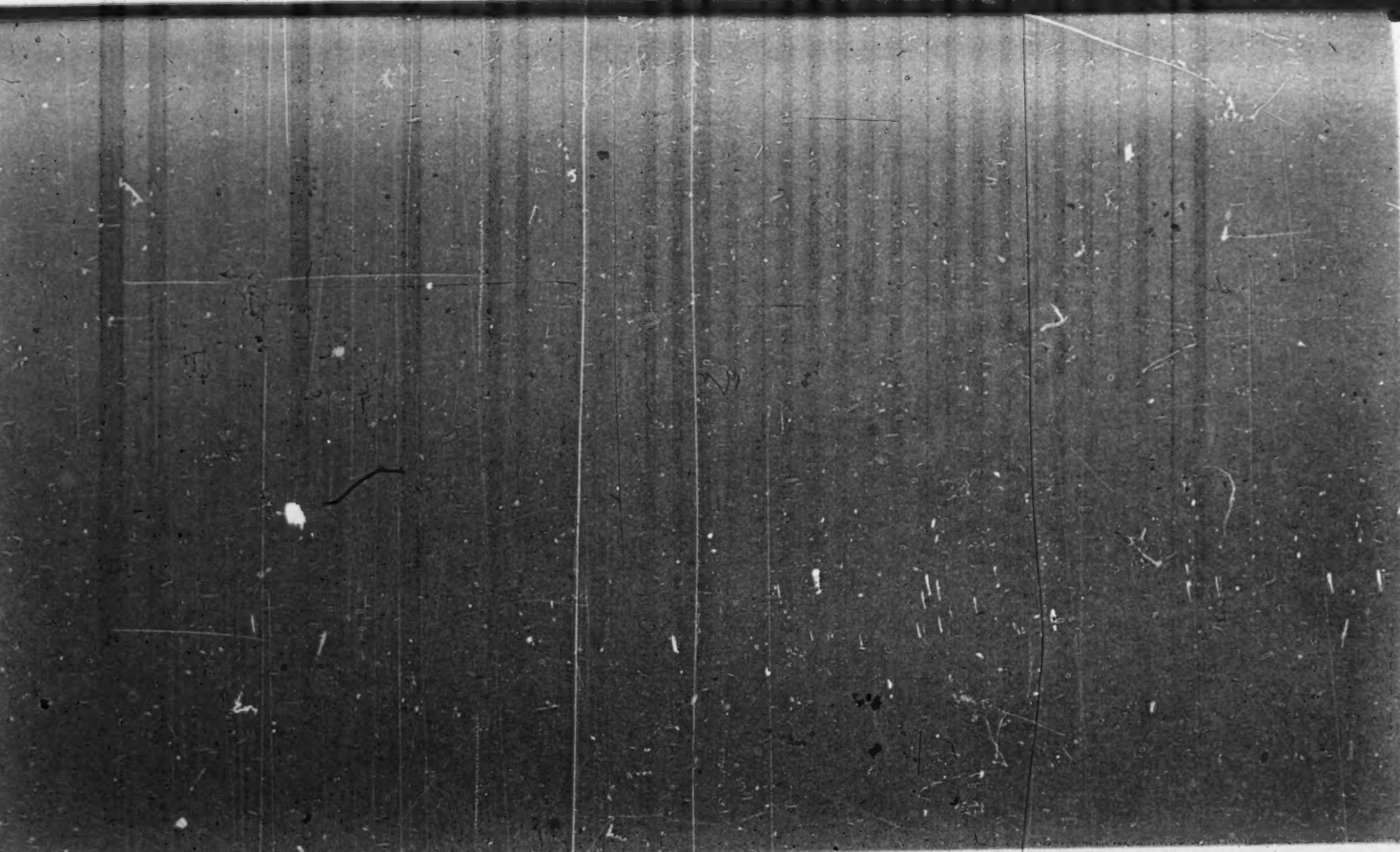
UNITED STEELWORKERS OF AMERICA,
PETITIONER,

vs.

AMERICAN MANUFACTURING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 28, 1959
CERTIORARI GRANTED NOVEMBER 9, 1959



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INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 5, 1960

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 13,666

UNITED STEELWORKERS OF AMERICA, an Unincorporated Association, Appellant,

vs.

AMERICAN MANUFACTURING COMPANY, a Corporation, Appellee.

On Appeal from the United States District Court, Eastern District of Tennessee, Southern Division

Appendix to Appellant's Brief—Filed September 5, 1958

[fol. 2]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION
Civil Action No. 3147

UNITED STEELWORKERS OF AMERICA, an Unincorporated Association, Plaintiff,

vs.

AMERICAN MANUFACTURING COMPANY, a Corporation, Defendant.

COMPLAINT—Filed December 19, 1957

I.

Plaintiff, a labor union, is an unincorporated association whose duly authorized agents are engaged in representing, in the Eastern District of Tennessee, members who are and have been employees of defendant in an industry affecting commerce within the meaning of the Labor Management Relations Act of 1947. Defendant is a corporation doing business in and having a principal place of business in Chattanooga, Hamilton County, Tennessee, within this District. Defendant has annually purchased large amounts of raw materials from and shipped large amounts of finished products to points outside the State of Tennessee. This is [fol. 3] a suit based upon violation of and seeking performance of a contract between a labor organization representing employees in an industry affecting interstate commerce as defined in said Act, as more fully hereinafter appears, and arises under said Act regulating commerce (29 U. S. C. 185; 28 U. S. C. 1337).

II.

On or about December 1, 1956, defendant executed a contract with plaintiff in writing. This contract covered and was executed by plaintiff as collective bargaining representative for and agent of certain employees of defendant at its Chattanooga, Tennessee, plant, including employee James Sparks. A copy of said contract is attached hereto as Exhibit "A."

III.

In accordance with the provision of said contract, a grievance was filed upon behalf of employee James Sparks covered by that contract, and a copy of said grievance is attached hereto as Exhibit "B." Said grievance was not adjusted under the provisions of Article IV of said contract. Plaintiff duly gave timely notice in accordance with said Article IV thereby submitting said grievance to arbitration. Defendant has failed and refused to confer and endeavor to agree upon the selection of a Board of Arbitration, and now refuses to submit this grievance to arbitration as required by said Article IV.

By the above described omissions and breaches of contract on the part of defendant, the employee to whom said grievance applies and who is represented by the plaintiff as his statutory sole collective bargaining agent and in this suit, and plaintiff, have not received the benefits of this collective bargaining contract, all to their substantial and irreparable injury.

[fol. 4]

IV.

Plaintiff and the employee whom it represents are without adequate remedy at law and will suffer immediate continuing and irreparable injury, loss and damage unless defendant is ordered specifically to perform the above contract, and in particular Article IV thereof, and is restrained from continuing to refuse to carry out its obligations thereunder.

V.

Plaintiff in behalf of itself and the employee whom it represents has requested defendant to perform its obligations under said Article IV but defendant has refused and failed to so perform as alleged above.

VI.

Plaintiff submits to jurisdiction of this Court and offers to do equity.

Wherefore, plaintiff demands:

1. That its right and the right of the employee whom it represents under Article IV of the collective bargaining contract with respect to arbitration of said grievance be determined, and that its incidental damages and the incidental damages of the employee represented by it as a result of defendant's violations of the terms of said contract, be fixed.

2. That defendant specifically be required to perform Article IV of said contract particularly with respect to said unresolved grievance which is Exhibit B hereto.

3. That defendant be restrained from in any manner failing or refusing to perform its obligations under said Article IV and particularly with respect to said grievance.

[fol. 5] 4. Incidental damages in the sum of Twenty-five Thousand Dollars ($25,000.00) as the amount of damages sustained by plaintiff and the employee whom plaintiff represents.

5. That defendant be temporarily restrained and enjoined by the injunction of this Court and in the form prayed above, and that upon appropriate determination of this cause said injunction be made final.

6. That plaintiff may have such other and further relief as by this Honorable Court may be deemed just and equitable in the premises, all at defendant's cost.

7. That appropriate process may issue commanding defendant to answer this Bill of Complaint and to abide by

such decree as this Honorable Court may make in the premises.

Van Derveer & Parks, James Building, Chattanooga, Tennessee;

Arthur J. Goldberg, General Counsel, United Steelworkers of America, 1001 Connecticut Avenue, N. W., Washington 6, D. C.;

David E. Feller, Associate General Counsel, United Steelworkers of America;

Cooper, Mitch & Black, 1329 Brown-Marx Building, Birmingham, Alabama,

Attorneys for Plaintiff.

[fol. 6]

EXHIBIT A TO COMPLAINT

Articles of Agreement.

This agreement dated this 1st day of December, 1956, made and entered into by and between the American Manufacturing Company, of Chattanooga, Tennessee, hereinafter for convenience sometimes designated interchangeably as the "Employer", the "Company" or the "Management", and the United Steelworkers of America, hereinafter referred to as the "Union", representing the bargaining unit hereinafter defined.

Witnesseth:

It is the object of the parties hereto to establish and maintain fair and equitable hours, wages and working conditions and other conditions of employment, and to observe and promote harmonious relations; neither party will exercise its powers, rights or functions oppressively in dealing with the other. That for and in consideration of the mutual covenants, conditions and agreements hereinafter specifically set forth, the Company and the Union have agreed and do by these presents agree as follows:

Recognition: Article I.

The Company recognizes the union as the sole and exclusive collective bargaining agency with respect to wages, hours, working conditions and other conditions of employment for and on behalf of all employees in the bargaining unit as defined by National Labor Relations Board except as to confidential employees of the employer at its Chattanooga, Tennessee, plant, but excluding office and clerical employees, professional and technical employees, guards, watchmen and all other employees and superyisors as defined in the Act.

[fol. 7] Management: Article II.

The Management of the works, the direction of the working force, plant layout and routine of work, including the right to hire, suspend, transfer, discharge or otherwise discipline any employee for cause, such cause being: infraction of company rules, inefficiency, insubordination, contagious disease harmful to others, and any other ground or reason that would tend to reduce or impair the efficiency of plant operation; and to lay off employees because of lack of work, is reserved to the Company, provided it does not conflict with this agreement. The Company shall exercise its sole discretion in the selection of supervisory employees.

Any new rules which the Company may make can be questioned by the Union within ten (10) days, and may be made the subject of a grievance if felt to be unreasonable.

If any discharged or disciplined employee contends that he was not guilty of the cause given, he may question his discharge or disciplining by filing written protest within three (3) working days from the date of his discharge or disciplining. Unless such written protest is filed, all question of the discharge or disciplining will be considered waived. Back pay for loss of time and/or wages may be allowed in part or in whole should it be determined that the complaining employee has been unjustly discharged or suspended. Should the parties fail to agree the arbitration clause may be invoked.

Committee: Article III.

The Union shall certify in writing to the Company the names of its Committeemen, who shall be active employees of the Company. Members of the plant grievance committee shall be paid for time spent in grievance meetings up to two hours per month for each committee member, the [fol. 8] total number of members not exceeding four. In the event of grievances mutually agreed upon as being critical, a meeting may be held at any time without loss of pay to the committee.

Grievance Procedure and Arbitration: Article IV.

If any employee or employees shall have any grievance as to the meaning, application, operation of any provision of the agreement, the same shall be promptly submitted by such employee, with or without his committeeman, to the Foreman of the Department in which the grievance arises. In the event such grievances are not settled between the employee, with or without his committeeman and the Foreman within forty-eight (48) hours, such grievances shall then be submitted on a regular grievance form to the Plant Superintendent or his designated representative, through the Plant Grievance Committee. In the event an adjustment is not reached within five (5) work days after grievance has been presented, grievance shall be submitted to the District Representative of the Union who shall immediately make an investigation of any matter referred to him, and should the grievance have merit, he and the Grievance Committee shall meet with the Plant Management in an effort to settle the Grievance. In the event that the District Representative of the Union and the Grievance Committee and Plant Management cannot reach a satisfactory agreement on the complaint within seven (7) work days, the same shall be submitted to arbitration for a decision as hereinafter provided, and such decision shall be final and binding on both parties.

Any disputes, misunderstandings, differences or grievances arising between the parties as to the meaning, interpretation and application of the provisions of this agreement, which are not adjusted as herein provided,

[fol. 9] may be submitted to the Board of Arbitration for decision. The Board of Arbitration shall consist of one arbitrator selected by the Union and one arbitrator selected by the Company, within five (5) work days after written notice to either party that the other desires to arbitrate the dispute. The two (2) arbitrators so selected shall appoint the third arbitrator within ten (10) days after notification of arbitration has been served by either party upon the other. If the two arbitrators cannot agree upon the third person as arbitrator within the specified time above, the American Arbitration Association shall be called upon to submit five (5) names as the impartial arbitrator. The Company shall strike two names, the Union shall strike two, the remaining or fifth name shall be the arbitrator and the Chairman of the Board of Arbitration. The Board of Arbitration shall hold hearings and render its decision in writing as expeditiously as possible.

The arbitrator may interpret this agreement and apply it to the particular case under consideration but shall, however, have no authority to add to, subtract from, or modify the terms of the agreement. Disputes relating to discharges or such matters as might involve a loss of pay for employees may carry an award of back pay in whole or in part as may be determined by the Board of Arbitration.

The decision of the Board of Arbitration shall be final and conclusively binding upon both parties, and the parties agree to observe and abide by same. A majority decision of the Board of Arbitration shall be the decision of the Board of Arbitration. The Union shall pay the expenses of their arbitrator, the Company shall pay the expenses of their arbitrator and the Union and Company shall equally pay the expenses of the third arbitrator.

[fol. 10] Reporting Pay: Article V.

Any employee reporting for regularly scheduled work or permitted to come to work without having been properly notified that there will be no work, shall receive a minimum of four (4) hours pay at the regular hourly rate, except in case of labor disputes, Acts of God, or other conditions beyond the control of the Management. An employee shall be considered to have been "properly noti-

fied" that there will be no work if informed not to report by mail, telegraph, in person, or by telephone, or if anyone is told that there will be no work at the phone number given by the employee as the number where he will receive messages from the Company. A notice that is posted on the bulletin board during the work hours of the preceding day shall also constitute such notification.

Any employee who after leaving the plant and being called back to work after his regularly scheduled shift shall receiye a minimum of four (4) hours at the established overtime rate.

Hours of Work: Article VI.

Eight consecutive hours work on a shift shall constitute a work day. The work week, shall begin on the day designated for beginning the individual employee's designated shift, and five consecutive days work on the employees designated shift shall constitute a work week, provided the employee has worked at least forty hours during the week. Time worked in excess of eight hours in any one day and in excess of forty hours during the week, shall be paid for at the rate of time and one-half. Work on the seventh day of any one week shall be paid at the rate of double time. Employees shall not be entitled to both daily and weekly overtime, but to whichever amount is the greater. Double time shall be paid for all hours worked in excess of sixteen (16) consecutive hours.

[fol. 11] Leave of Absence: Article VII.

Upon application in writing of any employee for leave of absence, if granted by the Company, such leave of absence shall not interrupt continuity of service. Permission for leave of absence, if granted, shall be in writing to such employee and a copy shall be sent to Local Union.

Safety and Health: Article VIII.

The Company shall at all times operate the plant in accordance with the Laws of the state of Tennessee and it shall be kept up to the standard customary in this community in so far as heat, ventilation, sanitation, safety

equipment, lockers, washrooms, shower baths, toilets, drinking water and other such similar facilities and conveniences are concerned.

It is agreed that the Company will furnish to employees, free of charge, rubber boots, rubber aprons, rubber gloves, protective cream, goggles, respirators, and other safety equipment when necessary for the employees in the operation of the plant.

It is understood by both parties that to achieve the objective of the elimination of accidents and health hazards that it is necessary that employees use the protective devices and safety appliances which are furnished them.

It is agreed that the Company may assess a fair charge to cover willful destruction by the employee of safety equipment issued to him. Worn or used items of safety equipment shall be turned in by the employee in order to receive new equipment.

Supervisors: Article IX.

It is hereby agreed that supervisors not covered by the Contract shall not perform work customarily performed [fol. 12] by the employees covered by this agreement. However, they may do special emergency or temporary work but not to the extent that such work would replace men in the bargaining unit.

Discrimination: Article X.

The Employer agrees that there shall be no discrimination of any kind against any employee, by reason of his or her membership in the Union, or on account of Union activities. The Union agrees that there shall be no Union activities on Company time except that necessary in connection with the handling of grievances as set out in this agreement. The Union, its officers and members shall not intimidate, or coerce employees into joining the Union.

Military Clause: Article XI.

The Company will conform with the provisions of the Selective Service Act in applying re-employment and other rights to employees affected by the Act.

Rate Establishment & Adjustment: Article XII.

Time values will be set by the Company on the basis of the average time of an average workman working at average speed under normal conditions, with reasonable allowances for fatigue, personal needs, and other factors recognized in sound time study methods.

The Company shall administer the incentive rate so that extra effort will be rewarded by increased earnings, and failure to do so may be made a grievance.

When a rate is issued as permanent, it will not be changed, unless there is a change in product, methods of production, materials, tools, equipment, engineering, elements of operations, or unless an error is found.

[fol. 13]

Bulletin Boards: Article XIII.

The Company agrees to permit the Union the use of Bulletin Boards for posting notices of Union meetings, Union activities and social affairs of the Union, after said notices are approved by the Plant Superintendent or Management.

Seniority: Article XIV.

All new employees shall be considered on a temporary or probationary basis for the first sixty (60) days of their employment. If retained after that period an employee is to be considered as a qualified regular employee and shall have seniority status as of the date of employment.

The Company and the Union fully recognize the principle of seniority as a factor in the selection of employees for promotion, transfer, lay-off, re-employment, and filling of vacancies, where ability and efficiency are equal. It is the policy of the Company to promote employees on that basis.

A lay off for periods of three (3) days or less will be considered temporary and may be made on the basis of departmental seniority and previous experience on the job. For the purposes of a lay off exceeding three (3) days, plant-wide seniority shall govern, when ability and efficiency are equal.

A seniority list shall be posted on the bulletin board within fifteen (15) days after the signing of this agreement, as determined by Company records. Unless an objection is filed within ten (10) days after posting, any such list shall become final and binding upon the Company, the Union and the employees.

In the event an employee has been laid off the Company shall notify that employee by mail, at his last known [fol. 14] address, when an opening is available. If the employee fails to report for duty within five (5) days he shall be considered as having left the employ of the Company, and seniority accrued during previous employment periods shall be forfeited. It shall be the duty of such employee to inform the Company, in writing, of any change of address.

An employee who has laid off of his own accord and has accepted employment elsewhere is agreed to be no longer an employee of the Company.

When an employee is off due to illness he shall notify the Company as soon as possible and shall confirm by mail not later than three (3) days from the beginning of absence from work.

Continued illness shall be reported once each week by mail, and the Company may require medical proof of illness.

Failure to report illness in accordance with above described procedure can be considered as a voluntary quit.

The Company will furnish forms for reporting by mail at no cost to the employee.

Holidays: Article XV.

The following days shall be recognized as holidays: Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, and New Years Day. All work done on such days, shall be paid for at the rate of double time, but shall not receive additional holiday pay. Emergency work, other than regular production work, caused by conditions beyond Company control, done on holidays shall be paid for at the rate of time and one-half, but shall not receive additional holiday pay.

[fol. 15] In addition—

The day before Christmas will be observed as a paid holiday in 1957 and 1958. Good Friday will be observed as a paid holiday in 1959.

Qualified employees will be paid eight (8) hours straight time pay for each of the hereinafter listed holidays, provided the employee meets the following eligibility requirements:

1. The employee must have a record of six (6) months continuous employment with the Company, before the holiday.

2. The employee must work all time made available to him in both the work day before and the work day after the holiday. An exception is made if the employee is unable to work because he is sick, in which case he shall furnish satisfactory certification from a medical doctor as to his illness.

An employee off from work on a written leave of absence prior to two weeks before the holiday shall not be entitled to holiday pay. An employee on suspension shall not be entitled to holiday pay.

When any of the above holidays fall on Sunday, the following day, or the day observed by the state will be observed as the holiday.

Pensions: Article XVI.

The pension plan now in effect with the Provident Life & Accident Insurance Company shall continue.

Insurance: Article XVII.

The group insurance plan now in effect shall continue.

[fol. 16]

No Strikes: Article XVIII.

The Company and the Union agree that during the term of this contract there shall be no strike, lockout, slowdown or any other interference with production unless one of the parties hereto refuses to abide by the decision of the Board of Arbitrators.

The Company agrees that it will not hold the Union liable for any unauthorized or unsanctioned strike.

Any employee participating in an unauthorized work stoppage, strike or slowdown shall be subject to discharge or other disciplinary action.

Wages: Article XIX.

Rates of pay are set forth in schedule "A" which is hereby made a part of this agreement.

The effective date of all increases will be as of December 6, 1956. (See Page 9)

An additional 5¢ per hour shall be effective on the following job classification:

1. Sample Maker Class A Job No. 72A.
2. Product Repair & Salvage Man Job No. 73.

The effective date of the above additional increase shall be as of December 6, 1956, and reflects a 40¢ per hour increase over present top rates in both of these job classes.

Vacation: Article XX.

All employees who have a record of one-half (½) year's continuous employment as of July 1, or sooner, whichever date is designated by the Company, and who have worked 800 straight time hours or more in the previous six (6) months period, shall be granted one-half (½) weeks vaca- [fol. 17] tion with pay during the period of July 1, 1957-58-59 to August 31, 1957-58-59. All employees who have a record of one year's continuous employment as of July 1, or sooner, whichever date is designated by the Company, and have worked 1600 straight time hours or more in the previous twelve (12) months period, shall be granted one week's vacation with pay during the period of July 1, 1957-58-59 to August 31, 1957-58-59. All employees who have a record of five (5) years continuous employment as of July 1, or sooner, whichever date is designated by the Company, and who have worked 1600 straight time hours or more in the previous twelve (12) months period, shall be granted two weeks vacation with pay during the period of July 1, 1957-58-59 to August 31, 1957-58-59. Continu-

ous employment shall be determined from the seniority roster.

In addition to the above provision any employee not qualifying for the above named vacation benefits shall be eligible for vacation pay as hereafter described.

1. Employees with 5 years or more seniority determine number of vacation hours due by multiplying hours worked during vacation qualifying dates by .04 (vacation hour factor).

2. Employees with from 1 to 5 years seniority determine as shown by using vacation hour factor of .02.

3. Employees with over 6 months but less than 1 year's seniority shall determine as above by using vacation hour factor of .01.

The pay for such vacation shall consist of not more than forty (40) hours per week, at the minimum basic hourly straight time rate for the individual employee concerned.

Employees entitled to ½ or 1 week's pay will receive checks at the time vacation begins, those receiving 2 [fol. 18] weeks' pay will have their second week's check mailed to them by the end of the first week they are off.

Employees who voluntarily quit or are discharged for "cause" as defined in Section II of this agreement before earning his vacation shall have no claim to vacation rights.

It is agreed that should an employee terminate his employment voluntarily or otherwise after earning but before taking his vacation, then this vacation pay shall be due and payable to such employee.

The Company will when possible and practical, grant vacations at times most desirable to employees, however, the Company reserves the exclusive right to allot the date of the vacation period and in emergencies may require necessary employees to accept in lieu of their vacation their pay for such vacation.

Check-Off: Article XXI.

The Company agrees upon the ratification of this agreement and subject to all provisions hereafter set forth, that

it will make deductions from the pay of each of its employees who join or who have joined the Union, and who voluntarily execute a deduction authorization card, for such initiation fees and current dues as may be levied by the Union within the provisions of the International Constitution, and continue such deductions month by month, for the duration of this agreement.

The Company agrees that on receipt of the voluntarily executed deduction authorization cards, it will make deductions for dues from the first pay period of each calendar month following receipt of the cards, provided that notice is given to the Company not later than the twentieth of the month preceding. Past due deductions not to exceed [fol. 19] current dues shall be made on the first pay period of the month following.

There shall be a fifteen (15) day period beginning with the expiration date of this contract or a year from the effective date of the contract whichever occurs sooner, during which employees may revoke the authorization for check off. Notice requesting such revocation shall be in writing to both the Company and the Union within the fifteen day period described above.

Sums collected by the Company as deductions under the check-off authorization shall be paid to the International Secretary-Treasurer of the Union. The Union agrees to save the Company harmless from any action growing out of these deductions and commenced by any employee against the Company, and assumes full responsibility for the disposition of the funds so deducted once they have been turned over to the International Secretary-Treasurer of the Union.

Contract Termination: Article XXII.

This contract shall remain in effect for a period of three years from the date of December 1, 1956, and shall automatically continue in effect thereafter unless either party gives notice to the other of its desire to modify or revise the Contract—such notice to be given at least 60 days prior to the termination date. Notice shall be given by registered mail to United Steel Workers of America, 1500

Commonwealth Bldg., Pittsburgh 22, Pa., with a copy to United Steel Workers of America, 611 Palmetto Street, Chattanooga 3, Tennessee. Notice to the Company shall be mailed to American Manufacturing Company, 124 Chestnut Street, Chattanooga 2, Tennessee, registered mail.

[fol. 20] Smoking Period: Article XXIII.

The smoking period as presently observed limits each employee to a maximum of three (3) minutes on the smoking bench, and failure to observe the three (3) minute limitation shall be subject to disciplinary action as provided by the Company rules and regulations.

In testimony whereof the parties hereto have executed this agreement the year and day first above written.

AMERICAN MANUFACTURING COMPANY,

By .....

.....

.....

UNITED STEEL WORKERS OF AMERICA,

By .....

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NEGOTIATING COMMITTEE: LOCAL No. 4928,

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Errata from page 6, Article XIX:

An additional 5¢ per hour shall be effective on both male and female employees of 6 months seniority as of December 6, 1957.

An additional 5¢ per hour shall be effective on both male & female employees of 6 months seniority as of December 6, 1958.

[fol. 21] SCHEDULE "A"—WAGES.

It is agreed that the following base rates shall prevail in accordance with the contract.

BASE RATES.

		Start	End of Two Months	End of Six Months
I	Male Employees	1.00	1.05	1.21
II	Female Employees	.90	.95	1.11

JOB RATES.

Labor Grade	Job Description	Job No.	Start	End of Two Months	End of Six Months
A	Stock Handler—F	3	.90	.95	1.11
B	Stock Handler—M	6	1.00	1.05	1.21
	Packer—F	9	.90	.95	1.11
C	Builder—F	12	.90	.95	1.11
	Fireman—Janitor—M	15	1.00	1.05	1.21
	Bench Assembler—F	18	.90	.95	1.11
	Punch Press Operator—F	21	.90	.95	1.11
D	Parkerizing Operator—M	24	1.00	1.05	1.21
	Kick Press Operator—F	27	.91	.96½	1.12
	Machine Operator—M	30	1.00	1.05	1.21
E	Plating Operator—F	33	.97	1.01½	1.18
	Order Filler—Boxer—M	36	1.00	1.05	1.21
E	Easel Machine Operator—M	37	1.00	1.05	1.21

Labor Grade	Job Description	Job No.	Start	End of Two Months	End of Six Months
C	Centrifugal Machine Operator—M	42	1.00	1.05	1.21
	Tumbler Operator—M	45	1.00	1.05	1.21
	Frame Bending Mach. Oper.—M	48	1.00	1.05	1.21
	Plating Operator—M	33 M	1.00	1.05	1.21
F	Bit Twister Operator—M	54	1.00	1.05½	1.22
	Press Setter Operator—M	57	1.00	1.05½	1.22
G	Frame Welding Mach. Oper.—M	60	1.05	1.10½	1.28
	Forging Mach. Oper.—M	63	1.05	1.10½	1.28
	Spot Welding Mach. Oper.—M	66	1.05	1.10½	1.28
	Ring Welding Mach. Oper.—M	69	1.05	1.10½	1.28
	Sample Maker—M	72	1.05	1.10½	1.28
[fol. 22]					
	Process Supervisor—M	75	1.05	1.10½	1.28
	Wire Straightener and Cut Off Mach. Oper.—M	78	1.05	1.10½	1.28
	Press Welder Operator—M	81	1.05	1.10½	1.28
	Wreath Machine Operator—M	81	1.05	1.10½	1.28
	Plating Operator Senior—M	33 S	1.05	1.10½	1.28
	Paint Sprayer	42 S	1.05	1.10½	1.28
H	Automatic Wire Forming Mach. Oper.—M	87	1.10	1.16½	1.39
	Sample Maker, Class A—M	72 A	1.10	1.16½	1.39
	Product Repair and Salvage Man—M	73	1.10	1.16½	1.39

Shift Premium.

There shall be a shift differential paid in addition to base rates of four (4) cents an hour for the second shift and six (6) cents an hour for the third shift.

EXHIBIT B TO COMPLAINT

Grievance Report.

USA Local Union No. 4928.

Location Chattanooga, Tennessee.

Name: James Sparks. Union Ledger No. ..... Age 25.

Address: 14 Trowhitt St., Chattanooga, Tennessee.

Department: Plating. Operation: ..... Check No. ....

Service: From November 9, 1955 through March 26, 1957.

Nature of Grievance: James Sparks and the Union, Local 4928, United Steelworkers of America, feel the Company is in violation of Article XIV, (Seniority) of present agree-
[fol. 23] ment by not allowing James Sparks to return to work at his regular job after being released by his doctor—(Dr. Kimsey) who has released him, saying—"he is able to return to his former job."

The Union demands the Company return James Sparks to his regular job and pay him for all time lost since his release on September 16, 1957.

(Date filed, September 23, 1957.)

[fol. 25]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE

SOUTHERN DIVISION

Civil Action No. 3147

UNITED STEELWORKERS OF AMERICA,

vs.

AMERICAN MANUFACTURING COMPANY.

ANSWER—Filed January 23, 1958

The defendant, American Manufacturing Company, for answer to the complaint filed against it in this cause, says:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court is without jurisdiction to determine the matters alleged to be in dispute.

Third Defense

The plaintiff is estopped from maintaining this action, or claiming that there is a grievance as alleged because of the action and final judgment of the Circuit Court of Hamilton County, Tennessee, in Workmen's Compensation Cause No. 7898, in the suit of James D. Sparks vs. American Manufacturing Company and Employers Mutual Liability Insurance Company of Wisconsin. In that suit the same James D. Sparks, for whose use and benefit the action before this Court has been brought, obtained an award of Workmen's Compensation benefits based on a permanent-partial disability of twenty-five (25%) percent. In that [fol. 26] case a judgment was awarded the said James D. Sparks for his disability in the sum of Three Thousand Six Dollars and Twenty-four Cents ($3,006.24) in addition to the costs of the cause, and in addition to Baroness Erlanger Hospital bill of One Hundred Twenty-eight Dollars Eighty Cents ($128.80) and the bill of Dr. Warren H. Kimsey in the sum of Four Hundred Thirteen ($413.00) Dollars). A certified copy of the entire record in the said proceedings in the Circuit Court of Hamilton County, Tennessee, is attached hereto and made a part hereof as Collective Exhibit "A" to this Answer.

As a further basis for this defense of estoppel, defendant shows that the plaintiff has heretofore claimed to have sustained an injury by accident in February of 1956; and that he has further claimed that in the course of his employment, he suffered another accident on March 29, 1957, aggravating the earlier injury, while "doing or performing essentially the same type of work," namely, "lifting a heavy frame from a rack about waist high over his head," and that "in order to do so was required to get in an awk-

ward or strained position." This is shown by the original petition, and by the order amending the original petition as found in the aforesaid Exhibit "A" to this Answer.

And defendant now shows that the said James D. Sparks represented, or caused to be represented to the Circuit Court of Hamilton County, Tennessee, on September 9, 1957, that by reason of said condition he had become disabled to the extent of fifty-five (55%) or sixty (60%) percent before surgery, and that on September 9, 1957 (after the surgery), he had a partial-permanent disability which would remain at about twenty-five (25%) percent. In this connection there was submitted the report of his attending physician and surgeon, Dr. Warren Kimsey, dated August 14, 1957, in the following words and figures:

[fol. 27] "Progress Notes.

Mr. James Sparks Age: 24 Ref: Joe VanDerveer
1400 Trewhitt Street
Chattanooga, Tennessee

Date: 14 August 1957

This patient returned today for re-examination. He states that the pain in his right leg has disappeared. He still has pain and stiffness in his lower back region and also he has some muscle spasm in the lumbar spine when he walks around or exerts himself.

Repeat examination revealed that there was mild muscle spasm in the lumbar muscles and forward flexion was still limitation of lumbar spine motion. This limitation was not as great as it was before operation. Examination of the lower extremities revealed that deep reflexes were plus 2, active and equal, and there was no hypalesia on sensory examination.

This patent is a laborer and he is a heavy and obese male. I believe he will have permanent disability as far as his lumbar spine is concerned by reason of having had a herniated disc which necessitated surgery. I believe his disability was 55 or 60 per cent before surgery and I believe it is approximately 25 per cent at the present time. I also believe that his partial permanent disability will remain at about 25 per cent.

WARREN KIMSEY, M. D."

Fourth Defense

Defendant admits that it executed the contract, a copy of which plaintiff has filed as Exhibit "A" to the complaint.

However, defendant denies that this matter is one for arbitration as plaintiff claims; and defendant denies that [fol. 28] plaintiff has properly presented any valid or arbitrable grievance, or that either the plaintiff or James Sparks has followed the prescribed and customary procedures, as plaintiff claims.

Defendant respectfully shows that James D. Sparks, for whose use and benefit this suit was filed, suffered a permanent-partial disability on the basis of which he sought, and on September 9, 1957, obtained an award of Workmen's Compensation Benefits. The alleged "Grievance Report" (Exhibit "B" to the complaint) bears date two weeks later. The contract under which plaintiff seeks to have this Court to act, in Article II reserves to the defendant, there designated as "The Management of the works," the direction of the working force the right to hire, and the right to suspend or discharge any employee for "any ground or reason that would tend to reduce or impair the efficiency of plant operation."

The said James D. Sparks, through his personal physician and surgeon, informed defendant that said Sparks has a twenty-five (25%) percent permanent disability and that he "cannot lift over thirty (30) pounds of weight."

The nature of defendant's business is such that the work necessarily and customarily done by James D. Sparks and the men of the plaintiff's association, involves the lifting of large frames, and of heavy racks or groups of frames, and requires able bodied action in bending over at the waist to deposit these in open tanks or vats containing solutions, some hot, some acid and some of other chemicals. It further necessitates the lifting and removal of the said frames or groups of frames out of said waist high tanks or vats, and the frequent repetition of this process. In this work it is impossible for the employee to avoid positions which at times will be awkward or strained. Also, a part of the work at times involves the handling and the pushing

of loaded bins or trucks up and over ramps connecting [fol. 29] different levels of the plant. On the finding of his own physician, and on the finding of other physicians whose reports were furnished the defendant, the said James D. Sparks, was not, and never will be, able to do the lifting, stooping and bending and type of work he necessarily would be required to do in defendant's plant. As is shown by his amended complaint in the Tennessee Court, he has heretofore had a ruptured intervertebral disc, which he averred was aggravated by the necessary physical activity of his work. As has been hereinbefore shown, he underwent surgery and has permanent disability. It is a fact of which the Court can well take judicial knowledge that a back condition, such as James D. Sparks is shown to have, would predispose him to further recurrence or aggravation should he pursue the type of work done in defendant's plant. The employment of this man would not only impair the efficiency of the plant operation in his own inability to do the necessary work, but also would be an impairment of the efficiency of the plant in the hazard that would be entailed to James D. Sparks himself and to other employees, by reason of the dangers incident to his working with and in proximity to other workers in this type of work; and by reason of the danger to himself and others of the possible splashing of acids and other chemicals necessarily used in these operations. Defendant's release and termination of employment was in keeping with the essential rights of management reserved to this defendant under the provisions of the Articles of Agreement on which the plaintiff relies in this cause, and was not a matter for arbitration.

Fifth Defense

Defendant avers that the said James D. Sparks, by his action, has waived all question as to the termination or discharge, and that the plaintiff is not now entitled to demand or require arbitration in this cause.

[fol. 30] Sixth Defense

The defendant, American Manufacturing Company, denies that it has refused or failed to perform any obligation required of it as plaintiff has alleged.

Seventh Defense

Defendant shows that the adjudication in favor of the plaintiff in the Circuit Court of Hamilton County, Tennessee, in Cause No. 7898 (Exhibit "A" to this Answer), was the adjudication of a Court of record in favor of the plaintiff, James D. Sparks (for whose use and benefit this present suit is brought), and against the defendant in this cause; and that this was a final adjudication of a permanent-partial disability and a lump sum payment in lieu of weekly benefits, and therefore, was settlement in advance and in full with the said James D. Sparks. That no appeal is pending from said judgment; that the time allowed by law for appeal has elapsed; and that said proceeding and judgment have become res judicata as to said permanent disability, and determinative of this cause for the defendant.

Wherefore, the defendant prays judgment that the complaint of the plaintiff be dismissed, and that the costs be taxed against the plaintiff.

Dated: January 22, 1958.

Harold M. Humphreys, 7th Floor, Hamilton National Bank Building, Chattanooga 2, Tennessee;

Strang, Fletcher & Carriger, By: J. S. Carriger, 1015 Hamilton National Bank Building, Chattanooga 2, Tennessee;

Attorneys for Defendant.

[fol. 31] Certificate of Service (omitted in printing).

EXHIBIT "A" TO ANSWER

RECORD OF PROCEEDINGS IN CIRCUIT COURT OF HAMILTON, TENNESSEE

[fol. 32] To Any One of the Honorable Judges of the Circuit Court of Hamilton County, Tennessee.

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

Workmen's Compensation Docket

No. 7898

JAMES D. SPARKS, Petitioner,

versus

AMERICAN MANUFACTURING COMPANY and EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN, Defendants.

PETITION FOR WORKMEN'S COMPENSATION

Your petitioner, James D. Sparks, respectfully shows unto the court as follows:

I.

That he, for quite some period of time, has been an employee of the American Manufacturing Company, 124 Chestnut Street, Chattanooga, Tennessee, and, as such was classified as a plating tank operator, that the defendant, American Manufacturing Company, is engaged in the manufacturing business and that the Employers Mutual Liability Insurance Company of Wisconsin, is their Workmen's Compensation Insurance carrier.

II.

That during the latter part of January or the first part of February, 1956, while engaged in this usual employment, he did suffer an "injury by accident," in that he

[fol. 33] suffered a severe injury to his back; that he was sent by the def. ndants to numerous and sundry doctors and after a period of time did return to his employment. That thereafter, and on or about March 29, 1957, he did suffer another "injury by accident" and since this latter date he has no longer been able to perform his duties.

III.

That he therefore suffered an "injury by accident" that arose out of in the "Scope of employment"; that his employer had actual notice thereof and, at his employers' suggestion and direction he furnished certain medical care, treatment and otherwise.

IV.

That his earnings were such as would require the payment to him of the maximum weekly benefits; that since his inability to work he has drawn no compensation payments whatsoever:

Premises Considered, Petitioner Prays:

1. That this Honorable Court entertain this petition, that service be had upon the defendants and that they be required to answer the same within the time required by law and the rules of this Honorable Court.

2. That at the hearing thereof the petitioner be granted those benefits to which he is rightfully entitled under and by virtue of the Workmen's Compensation Act.

3. That the petitioner be granted general relief.

VAN DERVEER & PARKS,
VAN DERVEER & PARKS,
Attorneys for Petitioner,
James D. Sparks.

[fol. 37]

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

Workmen's Compensation Docket

No. 7898.

JAMES D. SPARKS

Versus

AMERICAN MANUFACTURING COMPANY, and EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN

ORDER AMENDING PETITION—Entered June 4, 1957

Upon application of the defendant and by agreement of the parties it is ordered that the petition, heretofore filed, be and is hereby amended by adding thereto, at the end of Paragraph II, the following:

"That at the end of his first injury he was in the process of lifting a heavy frame from a rack about waist high over his head and in order to do so was required to get in an awkward or strained position; that thereafter, he was, by the defendant, sent to Dr. Guy Francis at Campbell Clinic in Chattanooga, Hamilton County, Tennessee, and received treatment on the following dates 2-6, 2-7, 2-8, 2-18, 2-21, 2-22, 2-27, 2-28, 3-1, 3-6, 3-7, 3-8, 3-10, 3-12, 3-14, 3-15, 3-16, 3-19, 3-20, 3-21, 3-27, 3-24, 3-31, 4-2, 4-9, 4-16, 4-23, 5-2, 5-8, 5-15, 5-22, 5-28, 6-5, 6-12, 6-26, 7-2, 7-10, 7-20, 7-21, 7-30, 7-31, 8-1, 8-2, 8-3, 8-20, 8-23, 8-28, 9-11, 10-18, 11-5, 11-21, 11-27, 12-13, 1956; 1-16, 1-24, 1-29, 2-20, 2-26, 3-22, 3-26, 3-27, 3-30, 4-10, 4-23, 4-30, 5-13, 1957. That in addition thereto he was by these doctors referred to other doctors, where it was determined by myelogram that he was suffering from a ruptured intervertebral disc. That subsequent to the above set forth injury and [fol. 38] while again, on or about March 29, 1957, doing or performing essentially the same type of work, and again lifting a large frame, he again injured, or re-injured his back and/or aggravated the condition here-

inabove set forth, that from the time of the first injury, hereinabove set forth, until the date of the filing of this petition, he has been, and now is, under the care of doctors and physicians of the Defendants' choice."

Entered this 4th day of June, 1957.

R. E. COOPER,
Judge.

VAN DERVEER & PARKS,
Attorneys for Petitioner.

FOLTS, BISHOP & THOMAS,
Attorneys for Defendant.

[fo]. 40]

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

(Workmen's Compensation Docket)

No. 7898.

JAMES D. SPARKS

Versus

AMERICAN MANUFACTURING COMPANY and EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN

ANSWER.

The defendants, for answer to the petition filed against them in the above styled cause, says;

I.

They admit the allegations of paragraph I of the petition.

II.

They neither admit nor deny the allegations of paragraph IV of the petition, but reserve the right to introduce proof as to the average weekly wages, if this should become material.

III.

They deny the allegations of paragraphs II and III of the petition.

IV.

The defendants rely upon and plead TCA 50-1003 and TCA 50-1017 as a bar to the suit of the petitioner.

[fol. 41]

V.

Defendants deny that they received any notice or had any knowledge of the accident which is alleged to have occurred on March 29, 1957, and therefore plead such lack of notice or knowledge as a bar to the action of the petitioner.

IV.

Defendants deny that petitioner sustained any injury or accident on March 29, 1957, and further deny that on such date petitioner aggravated a previous existing condition of his back or injured or reinjured his back.

FOLTS, BISHOP AND THOMAS.

[fol. 43]

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

No. 7898.

JAMES D. SPARKS

Versus

AMERICAN MANUFACTURING COMPANY, ET AL.

SETTLEMENT APPROVED—September 9, 1957.

This cause came on to be heard this day before the Hon. R. E. Cooper, Judge of the Circuit Court, upon the petition, the answer, the statements of attorneys for the parties, the testimony of the complainant, introduced in open court upon oath, and upon the entire record of the cause, from which the court finds as follows: That there is a serious dispute between the parties as to whether the accident

which resulted in the complainant's injuries occurred on March 29, 1957, or on February 1, 1956; that there is a serious dispute between the parties as to whether or not the complainant gave notice to the defendants, or either of them, of the alleged accident on March 29, 1957; that there is a serious dispute between the parties as to the amount of temporary total disability suffered by the complainant and also as to the amount of permanent partial disability sustained by the complainant; that the parties hereto have agreed upon a compromise and settlement of the issues involved herein by the terms of which the defendant will pay the bill of Baroness Erlanger Hospital, in the amount of $128.80; the bill of Warren H. Kimsey, M.D. in the amount of $413.00; and in addition will pay the complainant the sum of $3,006.24; and the court being of the opinion that the said settlement and compromise is proper and in all respects in accord with the terms and provisions of the Workmen's compensation law of the State of Tennessee, it is:

[fol. 44] Ordered, adjudged, and decreed that the said compromise and settlement be, and the same hereby is, in all respects approved; that the defendants pay Baroness Erlanger Hospital the sum of $128.80; that the defendants pay Warren H. Kimsey, M. D., the sum of $413.00; and that the complainant have and recover of the defendants the additional sum of $3,006.24, and the costs of this cause, for all of which an execution may issue. Upon payment of the aforesaid sums, the defendants are released from any and all further liability to the complainant.

A statutory lien in the amount of 20% upon the recovery of $3,006.24, is hereby declared in favor of Van Derveer and Parks, Attys. for the complainant.

This 9th day of September, 1957.

R. E. Cooper,
Judge.

Approved for entry:

Van Derveer & Parks,
Attorneys for Complainant.

Folts, Bishop & Thomas,
Attorneys for Defendants.

[fol. 45]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION
Civil Action No. 3147.

UNITED STEELWORKERS OF AMERICA, an Unincorporated Association, Plaintiff,

vs.

AMERICAN MANUFACTURING COMPANY, a Corporation, Defendant.

MOTION FOR SUMMARY JUDGMENT—Filed February 18, 1958

Plaintiff herewith respectfully shows the Court that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law.

Accordingly, plaintiff moves the Court for summary judgment directing defendant to comply with the terms of the collective bargaining contract set out in the complaint and to submit the dispute in question to arbitration.

Cooper, Mitch & Black, By Jerome A. Cooper, 1329 Brown-Marx Building, Birmingham, Alabama.

Copy of the foregoing served by mailing this 17 day of February, 1958, to Messrs. Strang, Fletcher, Carriger & Walker, Hamilton National Bank Building, Chattanooga 2, Tennessee.

Jerome A. Cooper.

[fol. 46]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

(Title omitted)

AFFIDAVIT OF R. W. GODDARD—Filed February 25, 1958

State of Tennessee,
County of Hamilton.

Before me, a notary public in and for said county and state, personally appeared R. W. Goddard who, first being duly sworn, deposes and says:

Affiant is a Staff Representative of United Steelworkers of America, plaintiff in this action. I am assigned to service the Local Union at the plant of defendant, American Manufacturing Company, in which Local James D. Sparks, referred to in the complaint, has membership. The defendant (which I will refer to as the Company) did not state its answer to the grievance referred to in the complaint by writing on the back of the grievance, as is the usual custom. But I was told by representatives of the Company that I would receive the answer to the grievance in writing. The answer which I received from the Company is set forth in the letter of November 19, 1957, attached to my affidavit as Exhibit "A".

[fol. 47] As a representative of the Union, I notified the Company in writing on October 21, 1957, that the grievance of James D. Sparks was to be taken to arbitration. (See Exhibit "B" to my affidavit.) My letter of October 21, 1957, also named the Union's arbitrator, Mr. R. E. Starnes. On or about October 28, 1957, I was notified by Mr. Harold Humphreys by telephone that he, Mr. Harold Humphreys who is the Company's attorney, was to act as the Company's arbitrator. Mr. Humphreys asked me to have the Union's arbitrator write him a letter giving him a list of names of arbitrators that would be agreeable to the Union. On October 30, 1957, a letter was sent to Mr. Harold Humphreys

from Mr. R. E. Starnes listing four names of arbitrators who were acceptable to the Union. (See Exhibit "C" to this affidavit.)

On October 29, 1957, I received a letter from Mr. Humphreys saying the Company was requesting another examination of the grievant, Mr. Sparks. His letter also requested an extension of the five-day period provided in the present contract (see Exhibit "A" to the complaint, Article IV, governing grievance procedure and arbitration). Upon receipt of Mr. Humphreys' letter I called him by telephone to inquire as to what was going on. Mr. Humphreys told me the Company wanted the grievant, Sparks, examined again, to which I did not object, but I did not agree to any further extension of time. At that time, the Plant Manager of defendant wrote me on November 6, 1957, to confirm the rescheduling of the proposed medical examination. (See Exhibit "D" to my affidavit.) I again did not agree to any extension of time. On November 11, 1957, I asked Mr. Alexander, the Company's Plant Manager, if the Company would sign a joint letter to the American Arbitration Association for a list of five names of arbitrators, as provided in the contract. Mr. Alexander said he would not have all the facts until after the re-[fol. 48] examination of grievant, to be made on November 12, 1957. On November 19, 1957, I received, finally, the Company's answer in writing to the grievance, refusing to arbitrate. (See Exhibit "A" to this affidavit.) Now, after giving its answer in writing on November 19, 1957, the Company has failed and refused to designate its arbitrator or to call upon the American Arbitration Association for the third person to act as arbitrator. The Union has been at all times ready and willing to proceed to arbitration as provided in Article IV of our contract.

I am making this affidavit to be submitted in the above proceedings.

R. W. GODDARD.

Sworn to and subscribed before me this 21 day of February, 1958.

LADENIA H. SMITH,
Notary Public.

EXHIBIT "A" TO AFFIDAVIT

American Manufacturing Company
(Metal Stampings and Wire Products)
124 Chestnut Street,
Chattanooga 2, Tennessee,

November 19, 1957

Mr. R. W. Goddard, Staff Representative
United Steelworkers of America
611 Palmetto St.
Chattanooga, Tennessee.

In accordance with your request and in confirmation of our telephone conversation of yesterday we make the following statement.

[fol. 49] The Company feels at this time that the James Sparks question is not arbitrable, since a Hamilton County Circuit Court has adjudicated the matter.

Very truly yours,

AMERICAN MANUFACTURING COMPANY

/s/ W. G. ALEXANDER,
Plant Mgr.

EXHIBIT "B" TO AFFIDAVIT

October 21, 1957

Mr. W. G. Alexander, Chief Engineer
American Manufacturing Company
124 Chestnut Street
Chattanooga, Tennessee.

Dear Sir:

Local Union 4928, United Steelworkers of America, which is the bargaining agency for the employees of your plant, has authorized me to notify you that the Local desires to take the grievance of James Sparks to arbitration, and under Article IV of the present agreement the Union

selects one arbitrator, the Company selects one, and the two get together within ten days to select the third arbitrator.

Local Union 4928 has selected Mr. R. E. Starnes—address, 95 Merritts Avenue, N. E., Atlanta 5, Georgia.

Yours truly,

UNITED STEELWORKERS OF AMERICA

R. W. GODDARD, Staff Representative.

RWG:amc.

cc: Mr. R. E. Starnes, Staff Rep., Atlanta.
Mr. Luther Childs, LU Pres. Chatta.

[fol. 50] EXHIBIT "C" TO AFFIDAVIT

UNITED STEELWORKERS OF AMERICA
AFL-CIO
DISTRICT 35
95 Merritts Avenue, N. E.
Atlanta 8, Georgia

October 30, 1957

Mr. Harold M. Humphreys
Attorney-at-Law
Hamilton Bank Building
Chattanooga, Tennessee.

Dear Sir:

Mr. R. W. Goddard, Field Representative for the United Steelworkers, informed me on the telephone that you were named arbitrator in a case you are familiar with. He suggested that I send you the names of some arbitrators who would be acceptable to us. Listed below are the names of four men on whom the Union would agree to serve as arbitrators.

Dr. J. Fred Holley
University of Tennessee
Knoxville, Tennessee

Paul Sanders
Vanderbilt University
Nashville, Tennessee

Wm. Hepburn
Emory University
P. O. Box 1042
Atlanta, Georgia

Ralph Roger Williams
Attorney-at-Law
Tuscaloosa, Alabama

Please let me know as soon as possible if any of these men would be acceptable to the Company to serve as arbitrators.

Very truly yours,

/s/ R. E. STARNES, Field Rep.

RES: h

cc: Mr. R. W. Goddard

[fol. 51] EXHIBIT "D" TO AFFIDAVIT

American Manufacturing Company
Pressed Metal & Wire Products
Chattanooga, Tennessee

November 6, 1957

Mr. R. W. Goddard, Staff Representative
United Steelworkers of America
611 Palmetto Street
Chattanooga, Tennessee

re: James Sparks Versus American Manufacturing Co.

Dear Mr. Goddard:

This letter is to confirm the rescheduling of the medical examination of James Sparks by Dr. George W. Shelton on Tuesday, November 12, at 1:00 P. M.

It is our understanding that someone at Dr. Shelton's office called and explained to you the necessity for a change in the examination date on account of Dr. Shelton being ill and not having been in his office since last Saturday.

We are sending a copy of this letter to James Sparks so that the change may be confirmed to him also.

Very truly yours,

AMERICAN MANUFACTURING COMPANY

/s/ W. G. ALEXANDER,
Plant Manager.

WGA:j

cc: James Sparks
14 Trewhitt Street
Chattanooga, Tennessee

[fol. 53]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE

SOUTHERN DIVISION

Civil Action No. 3147.

UNITED STEELWORKERS OF AMERICA, an Unincorporated Association, Plaintiff,

vs.

AMERICAN MANUFACTURING COMPANY, a Corporation, Defendant.

AFFIDAVIT OF R. W. GODDARD—Filed March 31, 1958

State of Tennessee,
County of Hamilton.

Affiant is the R. W. Goddard who has previously executed an affidavit in this cause. Attached to this affidavit is a correct copy of the statement of Dr. Kimsey advising that James D. Sparks could return to his former duties.

R. W. GODDARD.

Sworn to and subscribed before me this day of March, 1958.

.....

Notary Public.

September 16, 1957

To Whom It May Concern:

Mr. James Sparks is now able to return to his former duties without danger to himself or to others.

WARREN KIMSEY, M. D.

[fol. 54]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE

SOUTHERN DIVISION

(Title omitted)

OPINION ON MOTIONS FOR SUMMARY JUDGMENT—April 21, 1958

This is a suit filed by a labor union seeking performance of a contract between that union, the United Steelworkers of America, and the American Manufacturing Company. It is alleged that the Company refused to arbitrate a dispute involving one James Sparks, an employee covered by the contract. See American Lava Corp. v. Local Union No. 222, Etc. (6th C. A.), 250 F. 2d 137.

The company maintains that Sparks, having arranged a settlement of a workmen's compensation case against the Company providing that he is permanently partially disabled, is estopped from asserting his seniority rights as an employee; denies that Sparks is physically able to do the work required of his former job; and contends that the contract does not provide for arbitration of this type of dispute.

The contract provides, in Article II, that—"The management of the works, . . . including the right to hire, suspend, transfer, discharge, or otherwise discipline any employee for cause, such cause being . . . any other ground or reason

that would tend to reduce or impair the efficiency of plant operation; . . . is reserved to the Company."

[fol. 55] The contract also provides, in Article XIV, that . . . "The Company and the Union fully recognize the principle of seniority as a factor in the selection of employees for . . . re-employment and filling of vacancies, where ability and efficiency are equal."

The Union contends that the Company violates the above seniority provision in refusing to re-employ Sparks in his former position.

It is admitted that he left his position on account of illness which disabled him, and that he has been awarded workmen's compensation based on a twenty-five per cent partial permanent disability. This award was made in settlement of a claim made by Sparks.

This settlement was approved by the Circuit Court of Hamilton County on September 9, 1957. On September 23, 1957, a grievance was filed on behalf of James Sparks indicating that he was released on September 16, 1957, in violation of his seniority rights.

Can an employee contend, in a workmen's compensation claim, that he is at least twenty-five per cent totally disabled, and, based upon that claim, accept a substantial cash settlement from his employer, and then, within a few days, force the employer to grant to him full seniority rights, or any rights as an employee?

This is not a situation where an employee has been discharged or disciplined for cause under Article III, although it approaches a discharge for reduction in the efficiency in plant operation.

This is a situation where Article XIV, Seniority, applies. The basic question is, can Sparks contend—and this means contend, not prove—that his ability and efficiency are equal to that of the other employees when he has very recently contended, in court, that he is partially permanently dis-

[fol. 56] abled; and the Company, relying on that contention, has settled on him a substantial sum of money to recompense him for that disability.

Res judicata is not involved. This same question has not been before any court.

Judicial estoppel may be involved. In the case of Southern Coal & Iron Co. v. Schwoon, 145 Tenn. 191, at page 226, the Supreme Court of Tennessee said: "The rule that a party will not be allowed to maintain inconsistent positions in judicial proceedings is not strictly one of estoppel, partaking rather of positive rules of procedure based on manifest justice, and to a greater or less degree on the orderliness, regularity, and expedition of litigation." The court there distinguishes between equitable and judicial estoppel, the only difference being that equitable estoppel is available only where a party is prejudiced. Since, in the case now before this Court, the Company would be prejudiced if it were required to hire, as physically unimpaired, a former employee who had received a lump sum payment for a disability the term of which coincided with the term of proposed service, it is only necessary to determine whether an estoppel, equitable or judicial, applies.

Section 67 of the third edition of Gibson's Suits in Chancery describes an estoppel in the following manner—"Whenever A, by acts, words, or silence, intentionally causes or permits B to do a thing he would not otherwise have done, it would be manifestly inequitable for A, by repudiating the very conduct by which he induced B to act, and by setting up rights of his own, inconsistent with his said conduct, to compel B to incur a loss by undoing the very thing A's conduct caused him to do." This definition clearly covers the situation now before this Court.

The defendant has filed a brief opposing the plaintiff's motion for summary judgment, and in its brief has made a [fol. 57] motion for summary judgment on its behalf. While this informal way of submitting a motion for summary judgment is not to be encouraged, yet the Court will consider it as such.

Rule 56 (c), Federal Rules of Civil Procedure, provides that a judgment may be rendered summarily where there is no genuine issue of any material fact, and "that the moving party is entitled to a judgment as a matter of law."

The Court is of the opinion that all the facts are within the record and there is no dispute pertaining thereto. Therefore, the case is a proper one for action upon a motion for summary judgment.

For the reasons heretofore announced, the motion of the plaintiff for summary judgment is denied and the motion of the defendant for a summary judgment is granted, and there will be an order accordingly.

LESLIE R. DARR,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

(Title omitted)

ORDER ENTERING SUMMARY JUDGMENT FOR THE DEFENDANT AND DISMISSING COMPLAINT

This case came on to be heard on the motion of the plaintiff for Summary Judgment, and on the affidavits filed in support of and in opposition to said motion, and the [fol. 58] pleadings and the exhibits filed; and the motion having been fully presented on hearing before the Court, and by briefs of counsel for the respective parties; and the defendant having made an informal motion for summary judgment in its behalf;

The Court being of the opinion that the case is a proper one for action upon a motion for summary judgment, and that plaintiff's such motion should be denied, but that defendant is entitled to a judgment in its favor as a matter of law, and that summary judgment should be rendered for the defendant, now for the reasons set out in the Court's memorandum opinion, it is therefore

Ordered, Adjudged and Decreed that summary judgment be entered in favor of the defendant, American Manufacturing Company and against the plaintiff, United Steelworkers of America, and that the complaint be and it is hereby dismissed on the merits with costs.

Enter:

.....
United States District Judge.

Approved for Entry:

Harold M. Humphreys and Strang, Fletcher, Carrigan & Walker, By John Carrigan, Attorneys for Defendant.

[fol. 62] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 13,666

UNITED STEELWORKERS OF AMERICA, an Unincorporated Association, Appellant,

vs.

AMERICAN MANUFACTURING COMPANY, a Corporation, Appellee.

On Appeal From the United States District Court, Eastern District of Tennessee, Southern Division

Appendix of Appellee—Filed October 3, 1958

[fol. 66]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. G. ALEXANDER IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FOR PLAINTIFF—Filed March 28, 1958

State of Tennessee,
County of Hamilton.

Being duly sworn, William G. Alexander deposes as follows:

I, William G. Alexander, am now and was throughout 1957 the Plant Manager of the American Manufacturing

Company in Chattanooga, Tennessee. I reside on Valerian Drive, N., Chattanooga, Tennessee.

The business of our plant is that of metal stamping and the manufacture of wire products.

The James D. Sparks who was the plaintiff in the Workmen's Compensation suit No. 7898 in the Circuit Court of [fol. 67] Hamilton County, Tennessee, brought against the American Manufacturing Company and the Employers Mutual Liability Insurance Company of Wisconsin, is the same person as the James Sparks, for whose use and benefit the present action was brought in this Court.

As said Sparks has averred in the said Circuit Court suit, he first claimed to have hurt his back in the course of his usual employment in our plant in February of 1956. In March, 1957, he claimed to have hurt his back again while doing or performing his same usual kind of work, that is, while lifting a large frame. In that suit in the State Court, said Sparks said that his work involved lifting of frames over his head from a rack about waist high, and that "in order to do so was required to get in an awkward or strained position."

Upon the representation of Mr. Sparks' personal physician, Dr. Warren H. Kimsey, that Mr. Sparks was twenty-five percent permanently partially disabled, a settlement was agreed to in the amount of a lump sum payment of Three Thousand, Six Dollars, Twenty-four Cents ($3,006.24) in addition to the payment of doctors bills totaling Five Hundred Forty-one Dollars, Eighty Cents ($541.80), this matter being presented to the Circuit Court and approval obtained on September 9, 1957, the final order in that Circuit Court case was approved by Attorneys Van Derveer & Parks appearing for said James D. Sparks.

On August 14, 1957, shortly before this Court decision, Dr. Warren Kimsey (the personal physician attending and who had operated on James Sparks) had advised that James Sparks "cannot lift over thirty pounds of weight." He had undergone an operation (an open operation on his back) as to an alleged ruptured intervertebral disc.

On September 4, 1957, Dr. George W. Shelton, on examination of James Sparks, estimated his permanent partial disability at twenty-five percent of the body as a whole.

[fol. 68] Subsequently, when James D. Sparks (or his attorneys for the plaintiff, United Steelworkers of America in his behalf) sought to compel his return or rehiring "at his regular job" we undertook to give him the benefit of the doubt by arranging for a further examination by Dr. George W. Shelton. That examination was held with the approval of both James Sparks and the complainant Union.

On November 14, 1957, Dr. Shelton, after making this examination, reported that he found no reason to change his earlier estimate of permanent partial disability of twenty-five percent of the body as a whole for his particular type of work, and said "it is my opinion that he should not be placed on work requiring heavy lifting, or prolonged stooping or bending." A true copy of Dr. Shelton's letter to American Manufacturing Company dated November 14, 1957 is filed herewith as Exhibit A to this affidavit.

Under these circumstances, I then, on behalf of the American Manufacturing Company, declined to submit the matter to arbitration, for the reason that the question of his disability had been determined by a Court of record, and no claim or insistence was made on his behalf that there was any error or mistake in the determination and award based on permanent partial disability.

Dr. Warren Kimsey on August 14, 1957 had likewise advised plaintiff, James Sparks, of the same permanent partial disability of twenty-five percent, and defendant had been furnished a copy which is fully and correctly quoted in the answer filed in this Court. That letter as there quoted is here incorporated by reference.

In order that the Court may more clearly understand the nature of the work which the complainant Union insists that James Sparks must be returned to, we have had a series of photographs made by Mr. A. Charles Hinkle, a commercial photographer, and file these herewith. These were taken in normal course of operations and none of them were specially posed. These are filed as Exhibits B-1 through B-11 to this affidavit.

[fol. 69] Exhibit picture No. B-1 shows the plating department to which it was requested (see Plaintiff's Exhibit B to its Complaint) that James Sparks be returned to work. Exhibits B-2 through B-10 show typical work procedures

which the men in this department are called on to perform from time to time. All employees in this department are expected and required to take their turns and work interchangeably in the various work performed there. The activities depicted in these pictures and the positions in which workmen are shown, are not posed or staged, but are typical of the positions required in the regular course of the work performed.

Exhibit B-11 shows another part of the work called for and required of men in this department, namely, the cooperation of the workers in the transfer of a load by hand truck up and over one of the ramps. Such work requires the able-bodied assistance of the men of the department, taking their turns, in carrying out this necessary part of the work.

These picture exhibits further show the vats and tanks which contain acids and chemicals necessarily used in the course of defendant's business operations.

These exhibits will, I believe, be of aid to the Court in understanding Article 2 of the Collective Bargaining Contract filed as Exhibit A to the plaintiff's Complaint. The Court's attention is directed to the provision that the management of the works, including the right to hire and to discharge, "is reserved to the company," and especially on any "ground or reason that would tend to reduce or impair the efficiency of plant operation"; and by inference that might be harmful to others.

The defendant, American Manufacturing Company, does not have any light jobs. It has no work to provide James Sparks where he will not be required to bend and stoop and lift, or where he will not at times have to lift weights totalling more than thirty (30) pounds.

William G. Alexander

[fol. 70]

EXHIBIT A TO AFFIDAVIT OF W. G. ALEXANDER

Report of Dr. George W. Shelton

November 14, 1957

American Manufacturing Company
124 Chestnut Street
Chattanooga, Tennessee

Re: James D. Sparks
14 Trewhitt Street
Chattanooga, Tennessee

Att: Mr. Alexander

Dear Sir:

This patient returns stating that he is feeling quite good, though there is still some soreness in his back and if he bends for any length of time he feels the pain. He has slight numbness in his right great toe as compared to the left. He has no feeling of weakness. He says he feels much better than he did prior to the operation, and he attributes this to some 39-pound weight loss since the time before the examination.

On examination at this time he is seen to be a well developed and nourished, slightly obese, colored male who has a well healed surgical scar extending from about L 3 spine to the sacrum. He has tenderness in the mid portion of this scar and over the adjacent lumbar muscles there is some tenderness. He was able to bend at least 75 percent of normal without any complaint of pain on bending. Examination lying revealed that the leg measurements, 5 inches above and below the patellae, were the same. There does seem to be slightly less muscle tone in the right calf than there is in the left. He still has diminished sensation over the right great toe. He still has a diminished right ankle jerk as compared to a very active left ankle jerk. Straight leg raising on the right at 100 degrees caused pain in his low back. There is full motion in all joints of the

lower extremities without any pain, muscle spasm
tenderness. The reflexes were present and active at t
[fol. 71] knee jerks, and he had the diminished right an
jerk already mentioned.

Discussion: I see no reason to change my opinion
stated on the examination of August 28, 1957. The patie
still has diminished sensation, pain on straight leg raisi
tenderness over the scar, and a diminished right ankle je
as compared to the left. At that time I estimated his p
manent partial disability to be 25 percent for the body
a whole for his particular type work. I see no change
the physical findings, so I see no reason to change
opinion as expressed on that examination. It is my opini
that he should not be placed on work requiring heavy li
ing, or prolonged stooping or bending.

Very truly yours,

GEORGE W. SHELTON, M.D.

GWS/ef.

[fol. 73]

EXHIBIT B-1 TO AFFIDAVIT OF W. G. ALEXANDER

Photograph showing plating department where Plaintiff-Appellant sought to return James Sparks to work

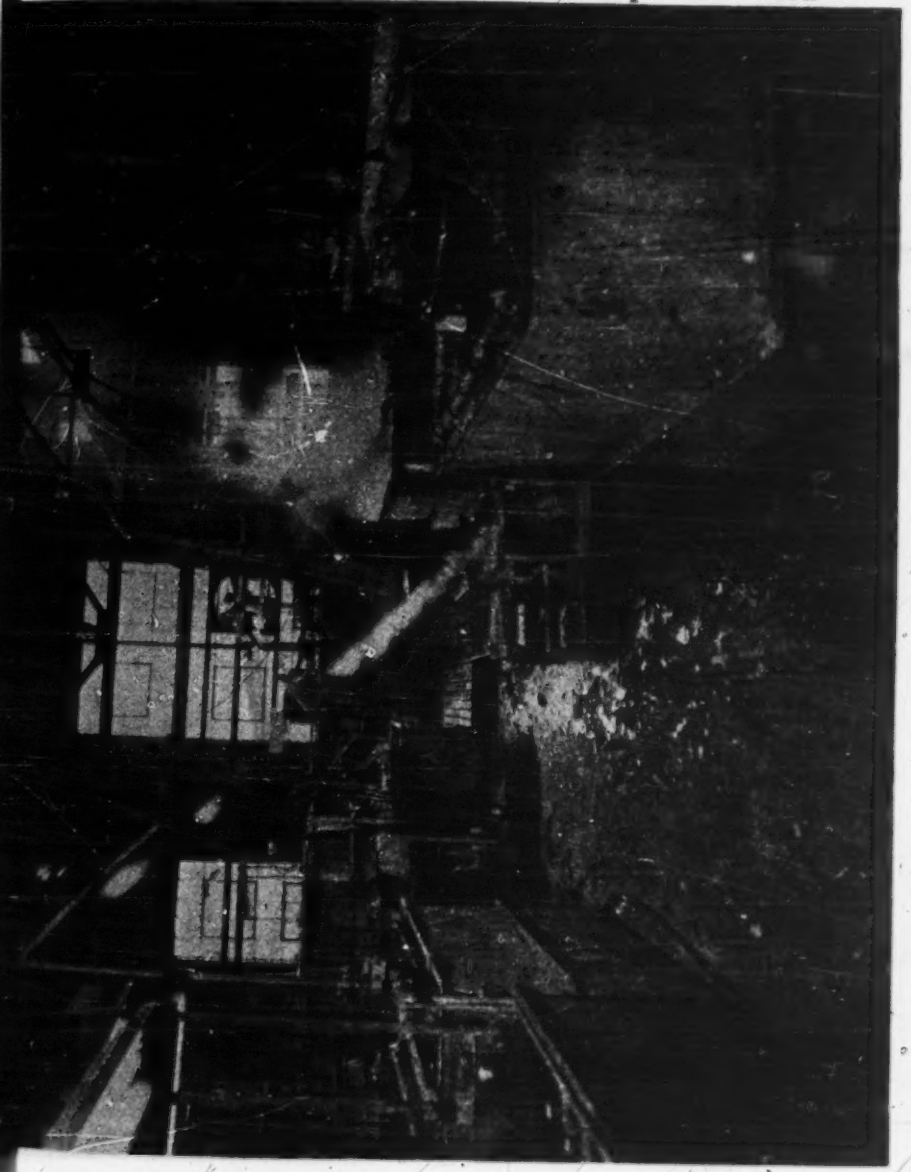

EXHIBIT B-2 TO AFFIDAVIT OF W. G. ALEXANDER

Photograph showing typical work procedure necessary for men in plating department

EXHIBIT B-7 TO AFFIDAVIT OF W. G. ALEXANDER

Photograph showing typical work procedure necessary for men in plating department

[fol. 79]

EXHIBIT B-11 TO AFFIDAVIT OF W. G. ALEXANDER

Photograph showing nature of part of work required

[fol. 81]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. NEIL THOMAS, JR.—Filed March 28, 1958

State of Tennessee,
County of Hamilton.

W. Neil Thomas, Jr., being duly sworn, deposes as follows:

I am an attorney practicing law in Chattanooga, Tennessee, being admitted to practice both in the State Courts and in the U. S. District Courts. I am a member of the law firm of Folts, Bishop & Thomas with offices in the James Building in Chattanooga.

The law firm of which I am a member represents in the Chattanooga area the Employers Mutual Liability Insurance Company of Wisconsin. In this connection we appeared as counsel for the defendants, American Manufacturing Company and Employers Mutual Liability Insurance Company of Wisconsin in defense of a Workmen's Compensation suit filed by James D. Sparks in the Circuit Court of Hamilton County, Tennessee, bearing W. C. Docket No. 7898 in that Court. The Employers Mutual Liability Insurance Company of Wisconsin, for the period of time in question, was the Workmen's Compensation insurance carrier covering the American Manufacturing Company.

In that case a settlement was negotiated with Mr. Joe VanDerveer, Attorney, appearing for James D. Sparks. This settlement was based on the insistence of his attorney, and the representation of his physician, Dr. Warren Kimsey, that James D. Sparks was twenty-five percent permanently partially disabled.

In support of the insistence of James D. Sparks made through his attorney, we, for the defendants in that Workmen's Compensation case, were furnished a report from Dr. Warren Kimsey dated August 14, 1957, copy of which is attached to and made an "Exhibit A" to, and part of, this affidavit. In that report Dr. Kimsey stated, "I believe he will have permanent disability as far as the spine is concerned * * *" and "I also believe that his partial permanent disability will remain at about twenty-five percent."

[fol. 82]. After learning that James D. Sparks had asked to be returned to his regular job at American Manufacturing Company, I, on October 30, 1957, wrote James D. Sparks with copy to his attorney, Mr. Joe VanDerveer, pointing out that his then position as to capability to do the work was inconsistent with his position taken in the compensation case. I requested a conference with him and with his attorney, as is shown in said letter, a true copy of which is attached hereto as "Exhibit B" and made a part of this affidavit. No answer or acknowledgment was received either from James L. Sparks or from his attorney.

Neither James D. Sparks, his attorney, nor any physician for him, has ever advised us directly or indirectly that there is actually any change from the twenty-five percent permanent partial disability claimed by James D. Sparks in September, 1957. In that suit Sparks received full Workmen's Compensation benefits under the Tennessee Law by lump sum settlement made by us on behalf of his Employer, American Manufacturing Company, and its Workmen's Compensation insurance carrier in the amount of Three Thousand, Six Dollars, Twenty-four Cents ($3,006.24), plus hospital and doctor's bills totalling Five Hundred Forty-one Dollars, Eighty Cents ($541.80), all based on the representations made by James D. Sparks and his physician that he had a twenty-five percent permanent partial disability.

W. Neil Thomas, Jr.

[fol. 83]

EXHIBIT A TO AFFIDAVIT OF W. NEIL THOMAS, JR.

Report of Dr. Warren Kimsey

PROGRESS NOTES

Mr. James Sparks Age: 24 Ref: Joe VanDerveer
1400 Trewhitt Street
Chattanooga, Tennessee

Date: 14 August 1957

This patient returned today for re-examination. He states that the pain in his right leg has disappeared. He

still has pain and stiffness in his lower back region and also he has some muscle spasm in the lumbar spine when he walks around or exerts himself.

Repeat examination revealed that there was mild muscle spasm in the lumbar muscles and forward flexion was still limitation of lumbar spine motion. This limitation was not as great as it was before operation. Examination of the lower extremities revealed that deep reflexes were plus 2, active and equal, and there was no hypalesia on sensory examination.

This patient is a laborer and he is heavy and obese male. I believe he will have permanent disability as far as his lumbar spine is concerned by reason of having had a herniated disc which necessitated surgery. I believe his disability was 55 or 60 per cent before surgery and I believe it is approximately 25 per cent at the present time. I also believe that his partial permanent disability will remain at about 25 per cent.

WARREN KIMSEY, M. D.

[fol. 84]

EXHIBIT B TO AFFIDAVIT OF W. NEIL THOMAS, JR.

Letter, Oct. 30, 1957 to James D. Sparks

FOLTS, BISHOP & THOMAS
Attorneys & Counselors at Law
Suite 610 James Building
Chattanooga, 2 Tennessee

October 30, 1957

Mr. James D. Sparks
14 Trewhitt Street
Chattanooga, Tennessee

Dear Mr. Sparks:

As you will recall, not too long ago we concluded a compromise and settlement of your workmen's compensation claims against American Manufacturing Company, based upon your representation and that of your Doctor, Warren Kimsey, that you were twenty-five per cent *permanently* partially disabled. It has now come to our attention

that you have applied to be returned to your old job a American Manufacturing Company and that you are in sisting that you are fully capable of performing all of th duties involved in the job. It would seem that your pres ent position with regard to your capability to do the worl is inconsistent with your position taken in your compensa tion case. We therefore request a conference with you an your attorney, Mr. VanDerveer, to ascertain whether o not the promise upon which our settlement was based wa well founded.

Very truly yours,

For Folts, Bishop & Thomas.

WNJR:FJ

cc: Mr. Joe Vanderveer
James Building
Chattanooga, Tennessee

[fol. 85]

In United States District Court

Brief in Opposition to Plaintiff's Motion for Summar Judgment—Filed April 7, 1958

I.

Defendant Requests Summary Judgment in Its Behalf

Plaintiff has filed a motion for summary judgment. How ever, the party e. itled to an order of summary judgmen is the defendant. Professor James Moore, in *Moore's Fe eral Practice* (2d ed.) Vol. 6, p. 2088, paragraph 56.1 says:

> "If either the proponent of the claim or the defend ing party moves for a summary judgment, and th Court finds that the moving party is not entitle thereto, but that the other party is so entitled, it woul seem that the Court has the power to enter the prope judgment, although a cross-motion therefor was no made. Rule 54 (c) gives the Court the power to ente the final judgment to which the prevailing party is en titled, even if the party has not demanded such relie

in his pleadings, except in default judgment cases. The theory is that the form of the pleadings should not place a limitation upon the power of the Court to do justice. So where one party has invoked the power of the Court to render a summary judgment against his adversary, it is reasonable that this invocation gives the Court power to render a summary judgment for his adversary if it is clear that the case warrants that result."

Professor Moore points out that "The great weight of authority, however, dispenses with the formality of a cross-motion and supports the above position of the Treatise."

II.

There Is No Grievance for Arbitration

Plaintiff says that James D. Sparks has a grievance based on alleged violation of Article 14 of the Labor Agreement involving seniority, and that this is an arbitrable [fol. 86] matter on which the Court should in this cause compel arbitration. The labor contract in question was entered into on December 1, 1956.

If there is no grievance requiring arbitration under the provisions of the bargaining contract, this Court, we respectfully submit, should now deny plaintiff's motion for summary judgment, and on the whole record before it, should now grant summary judgment to the defendant and dismiss this cause.

There is no grievance as to which arbitration is provided in the contract; there is no real grievance under any provision of the contract; and none has been substantiated in the record in this cause.

Plaintiff grounds its insistence entirely on an alleged violation of Article 14 (Seniority). It seems clear from the entire contract, that seniority is assured only to able-bodied employees. No provision for permanently disabled employees is contained in the agreement, either in the seniority section or in any other part. The controlling seniority provision is found in the first line at the top of page five of the exhibited copy of the Contract, where the application

of the seniority principle is specifically limited to cases "where *ability* and *efficiency are equal.*"

James D. Sparks, on his own insistence and by decree of Court of record of competent jurisdiction, has been found to be twenty-five (25%) percent less able and efficient than the able-bodied workmen required for the proper efficient operation of this manufacturing plant. His counsel (or rather counsel for the Union) argue that the decree in the State Court was a compromise decree. We assume that they mean by this that he claimed even a greater disability but agreed to settle on twenty-five (25%) percent. Certainly all the medical information and the whole record in this case confirms a permanent disability of at least twenty-five (25%) per cent. The statement of Dr. Kimsey dated September 16, 1957, exhibited to Mr. Goddard's second affidavit, does not show or claim any error or mistake in his earlier determination of the twenty-five (25%) percent permanent disability on August 14, 1957 [fol. 87] (about one month before). It is also significant that in the statement referred to in the grievance report (Exhibit B to the Complaint) Dr. Kimsey, as a part of that same statement also said—"He cannot lift over thirty pounds of weight." Actually Dr. Kimsey's said September 16th statement was signed just seven days following the State Court's award of twenty-five (25%) percent disability on September 9, 1957.

III.

The Work of This Defendant Requires Able-Bodied Employees

Plaintiff has not in any way denied the facts sworn to by Mr. William G. Alexander in his affidavit in this cause, showing that the nature of this defendant's plant is such that they require able-bodied employees; and that defendant does not have work available for an employee who is only three-fourths able-bodied.

In his petition as amended in the State Court, James D. Sparks showed that the nature of his work required stooping, bending and lifting and required him to be in awkward positions. This is further supported by the pictures exhibited to the affidavit of Mr. Alexander.

It is significant that plaintiff now submits to the Court as an exhibit to Mr. Goddard's second affidavit in this cause, a statement dated September 16, 1957, instead of bringing in an affidavit as of the current time which would actually meet the contentions of the defendant. It is also significant that approximately one month prior to this statement just referred to, the same doctor (being the one who had operated on the back of James Sparks), on August 14, 1957 had very positively declared this man to be permanently partially disabled "at about twenty-five (25%) percent." On November 14, 1957, Dr. George W. Shelton found "a permanent partial disability for the body as a whole," of 25% and concluded his report with the statement,

> [fol. 38] "It is my opinion that he should not be placed on work requiring heavy lifting, or prolonged stooping or bending."

Neither the said James D. Sparks nor anyone for him in this cause has ever insisted that there was any mistake in that percentage of disability. Plaintiff has never claimed that there was any error in the court award under the Tennessee Statutes compensating him for a twenty-five (25%) percent permanent disability.

It is pertinent that in the complaint filed here, there is no averment that plaintiff is able to do the work necessary in defendant's plant.

The contract exhibited to the complaint shows that the parties to that contract recognized that in this defendant's plant the nature of the work is such that able-bodied employees are required. On its first page, Article II specifically reserved to management the right to hire, suspend, transfer or discharge any employee for inefficiency, or for any ground or reason that would tend to reduce or impair the efficiency of the plant operation.

IV.

The State Court's Decree Is Res Judicata as to Sparks' Disability

We respectfully submit that the decision of the State Court is final, and is res judicata of the fact that James D.

Sparks is not an able-bodied person, but is twenty-five (25%) percent permanently disabled.

Although the present suit is brought by the United Steelworkers of America, it is solely for the use and benefit of James D. Sparks, the same person who was the plaintiff in the State Court suit. The present defendant, American Manufacturing Company, was a party also to the State case along with its Workmen's Compensation Insurance carrier.

Plaintiff has not shown any grievance which can properly be submitted to arbitration. The first sentence of the grievance and arbitration clause, Article IV of the Contract, provides that

> [fol. 89] "If any employee or employees shall have any grievance," it shall be submitted.

Sparks of his own initiative having sought and obtained a Court ruling of disability, and the compensation benefits allowed by law therefor, cannot now take an opposite position and say, "I'm able-bodied now. My ability and efficiency are equal to those of the able-bodied employees of this plant." It is clear beyond dispute that such statement would not be true.

In fact, plaintiff has not averred any such able-bodied condition. Nowhere in this cause does plaintiff claim that the Circuit Court's finding was erroneous. But plaintiff does now ask this Court to compel arbitration of a matter which has already been decided.

That decision still stands of record in the State Court.

Plaintiff does not in any way attack that decree.

There is no provision in the labor contract for arbitration under these circumstances.

This matter is one beyond dispute and therefore the parties should not be subjected to a useless arbitration proceeding.

It seems to us that should the Court lend its assistance to compel arbitration under these circumstances, the Court in effect would be giving aid to a party seeking to accomplish that to which he is not entitled. We respectfully urge that the Court refuse to lend dignity to what looks like a

scheme to circumvent the binding effect of the earlier action of James Sparks.

V.

The Decree in the State Court Is Binding and Determinative

The Tennessee Supreme Court, in the case of *Cantrell v. Burnett & Henderson Co.*, 187 Tenn. 552, 216 S. W. 2d 307, cites with approval the general rule as followed today, quoting the language as follows:

> "It is a fundamental principle of jurisprudence that material facts or questions, which were in issue in a [fol. 90] former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form the issue may take in the subsequent action, whether the subsequent action involves the same or a different form or proceedings, or whether the second action is upon the same or a different cause of action, subject matter, claim, or demand, as the earlier action. In such cases, it is also immaterial that the two actions are based on different grounds, or tried on different theories, or instituted for different purposes, and seek different relief; citing cases."
>
> *Cantrell* v. *Burnett & Henderson Co.*, 187 Tenn. 552, 216 S. W. 2d 307 at p. 309, citing and quoting 30 *Am. Jur.* pp. 920-921.

In a still later Tennessee Supreme Court case, it is stated in the opinion.

> "A final judgment or decree of the Court of competent jurisdiction, once pronounced on a question directly involved in the action, is conclusive between the parties."
>
> *Rutledge* v. *Rutledge* (1955), 198 Tenn. 665, 281 S. W. 2d 666 at 667.

VI.

This Court Can Properly Hold, Under These Circumstances, That This Matter Is Not Arbitrable

The contract before the Court does not give to the arbitrator any right to determine whether any given question is arbitrable.

The question presented is not one as to the "meaning, application, or operation" of the agreement. (See first sentence of Agreement—Article IV.)

[fol. 91] The record, as fully tested by the Motion for Summary Judgment and the affidavits pursuant thereof, shows: (1) That substantial permanent disablement has been conclusively determined; and (2) that there is no provision in the labor agreement for arbitration of the question on which plaintiff seeks to compel arbitration.

The U. S. Court of Appeals for the Sixth Circuit in March, 1957, said:

> "We are of the opinion that the question of whether an issue is an arbitrable one under a contract of arbitration is a legal question for the Court rather than for the arbitrator in the absence of a contract giving the arbitrator such jurisdiction."
>
> *International Union, etc.* v. *Benton Harbor Malleable Industries*, 242 Fed. 2d 536, at pp. 539, 540.

The Court of Appeals did not alter that rule or holding in the *American Lava* decision. The Court of Appeals in that opinion held that the American Lava dispute involved an interpretation of the meaning or application of the contract. The Court said:

> "The subject of the payment of a Christmas bonus was, therefore, under the terms of the bargaining contract, a matter for arbitration. • • • "
>
> *American Lava Corporation* v. *Local Union No. 222*, etc., —— Fed. 2d —— (decided January 2, 1958).

Conclusion

It has been found by Court decision that James Sparks is twenty-five (25%) percent permanently disabled. That decision is recognized and acquiesced in by him. The plant management has also been informed by James Sparks' own physician that he should not lift over thirty pounds of weight. Dr. George W. Shelton (a recognized specialist in bone and joint surgery), on November 14, 1957, warned defendant that this man "should not be placed on work re-
[fol. 92] quiring heavy lifting, or prolonged stooping or bending." Under these circumstances the defendant owes an obligation both to James Sparks and to those employees working in and around the vats of acids and other chemicals. It appears from the petition as amended in the State Court that this work was in excess of Sparks' physical ability even before he became so disabled. To require defendant to delegate to an arbitrator the responsibility for employing this disabled person, and exposing him and those working with him to such dangers, goes far beyond the scope and intention of the labor contract on which the plaintiff Union relies. Decisions of this kind were by that contract reserved to management. Such decisions cannot properly be delegated to a stranger having neither the experience nor the responsibilities of the employer, even though he be an experienced arbitrator. Certainly, where the contract makes no provision for arbitration of such a matter, this Court will not lend itself to plaintiff's efforts to compel an arbitration.

We believe it is now proper for the Court to deny plaintiff's motion and to now enter summary judgment in favor of the defendant, American Manufacturing Company.

Respectfully submitted,

Harold M. Humphreys, 6th Floor, Hamilton National Bank Bldg., Chattanooga 2, Tennessee;

Strang, Fletcher, Carriger & Walker, By: John S. Carriger, 1015 Hamilton National Bank Building, Chattanooga 2, Tennessee;

Attorneys for Defendant,
American Manufacturing Company.

[fol. 94] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—February 12, 1959 (omitted in printing)

[fol. 95]

IN UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JUDGMENT—March 19, 1959

Appeal from the United States District Court for the Eastern District of Tennessee

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

[fol. 96] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 13,666

UNITED STEELWORKERS OF AMERICA, Appellant,

v.

AMERICAN MANUFACTURING COMPANY, Appellee.

Appeal from the United States District Court for the Eastern District of Tennessee, Southern Division

OPINION—Decided March 19, 1959

Before: Allen, McAllister and Miller, Circuit Judges.

Miller, Circuit Judge. This action was brought by the appellant, a labor organization, under Sec. 301 (a) of the

Labor-Management Relations Act of 1947, Sec. 185 (a), Title 29, U. S. Code, to compel the appellee employer to arbitrate a grievance as provided by the provisions of a collective bargaining agreement between the parties. The District Judge denied the relief prayed for and entered summary judgment for the appellee.

The grievance, upon which arbitration was sought, arose out of the following circumstances. On or about March 29, 1957, James Sparks, an employee of the appellee and who was a plating tank operator, suffered a work-connected injury to his back. It was necessary for Sparks to discontinue his employment by reason of this injury. By virtue of proceedings under the Workmen's Compensation Act of Tennessee, Sparks obtained a compromise settlement and award under which the appellee was ordered to pay to [fol. 97] Sparks in addition to the payment of certain hospital and medical expenses in the total amount of $541.80, the sum of $3,006.24, which compromise award was approved by the State Court having jurisdiction of the cause on September 9, 1957. This settlement was negotiated and effected upon the representation of Sparks' attorney and the written report of Sparks' physician made on August 14, 1957, that Sparks had a permanent-partial disability to his spine of about 25 per cent. The court order approving the settlement and making the award referred to the serious dispute between the parties as to the amount of temporary total disability and as to the amount of permanent partial disability suffered by Sparks, but made no finding with respect thereto.

The award was promptly paid. Some two weeks thereafter Sparks applied to be returned to his old job with the appellee, taking the position that he was fully capable of performing all of the duties involved in the job. This position was based in part upon a written and signed statement of September 16, 1957, by the same physician who made the report of August 14, 1957, reading as follows, "To Whom It May Concern: Mr. James Sparks is now able to return to his former duties without danger to himself or to others." On September 23, 1957, the appellant filed a Grievance demanding that the appellee return Sparks to his regular job and pay him for all time lost

since September 16, 1957. On October 30, 1957, appellee's attorneys wrote Sparks, sending a copy to his attorney, that his present position with regard to his capability to do the work was inconsistent with his position taken in the compensation case and requested a conference. No answer to this letter was received from Sparks or his attorney. On November 19, 1957, appellee wrote the appellant, "The Company feels at this time that the James Sparks question is not arbitrable, since a Hamilton County Circuit Court has adjudicated the matter." This action followed on December 19, 1957.

The District Judge was of the opinion that the appellee would be prejudiced if it was required to hire, as physically unimpaired, a former employee who had received a lump sum payment for a disability, the term of which coincided with the term of proposed service, and that it would be manifestly inequitable for Sparks, by repudiating the very conduct by which he induced the appellee to act, to now [fol. 98] take a position inconsistent with such conduct and compel appellee to incur a loss. Applying the foregoing principle of estoppel he sustained appellee's motion for summary judgment.

It may be that the principle of estoppel is applicable to this case and would bar Sparks from reinstatement to his former position. But appellant contends that the District Court did not have the authority or jurisdiction to make such a ruling. The collective bargaining agreement did not confer such authority upon it. On the contrary, Article IV of that agreement providing for grievance procedure states that if a satisfactory agreement with respect to a complaint can not be reached through the procedure provided, "the same shall be submitted to arbitration for a decision as hereinafter provided, and such decision shall be final and binding on both parties." If the grievance is an arbitrable one under the provisions of the collective bargaining agreement, appellant has the right to have this issue, including appellee's defense of estoppel, decided by the arbitrators instead of by the Court. *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448; *Local 19, Warehouse, etc.*, v. *Buckeye Cotton Oil Co.*, 236 F. (2) 776, C. A. 6th.

We recognize that under the ruling of this Court the question of whether an issue is an arbitrable one under the collective bargaining agreement is a question of law for determination by the Court. *International Union, etc.*, v. *Benton Harbor Malleable Industries*, 242 F. (2) 536, 539-540, C. A. 6th, cert. denied, 355 U. S. 814; *Local No. 149, etc.*, v. *General Electric Co.*, 250 F. (2) 922, C. A. 1st, cert. denied, 356 U. S. 938. In *American Lava Corporation* v. *Local Union No. 222, etc.*, 250 F. (2) 137, C. A. 6th, we held the grievance there involved to be arbitrable and required the employer to arbitrate. We did not, however, attempt to adjudicate the grievance on its merits.

Nor do we think that arbitration could be denied as a matter of law on the ground relied upon by the appellee, namely, that the issue involved had previously been adjudicated by the Hamilton County Circuit Court. Contrary to appellee's contention, there has been no adjudication that Sparks was 25 per cent permanently disabled. The State Court judgment in the Workmen's Compensation proceeding referred to the dispute existing between the parties with respect to the injuries and approved a com-[fol. 99] promise settlement without making a finding on the extent of the injuries. The question of estoppel may be involved, but the nature and extent of Sparks' injuries were not judicially determined.

However, it is settled law that the judgment of the trial court should be affirmed if the appellate court is of the opinion that it is correct, even though for reasons different from those relied upon by the trial judge. *Helvering* v. *Gowran*, 302 U. S. 238, 245; *J. E. Riley Investment Co.* v. *Commissioner*, 311 U. S. 55, 59. If the grievance was not an arbitrable one as a matter of law, the judgment dismissing the action must be affirmed. *International Union, etc.*, v. *Benton Harbor Malleable Industries*, supra, 242 F. (2) 536, C. A. 6th, cert. denied, 355 U. S. 814. Accordingly, we consider that question.

Article XIV of the collective bargaining agreement states that the company and the Union fully recognize the principle of seniority as a factor in reemployment and filling of vacancies "where ability and efficiency are equal."

Article II provides, "If any discharged * * * employee contends that he was not guilty of the cause given, he may question his discharge by filing written protest within three (3) working days from the date of his discharge * * *. Should the parties fail to agree the arbitration clause may be invoked."

Article IV provides the Grievance Procedure and Arbitration. It states, "If any employee * * * shall have any grievance as to the meaning, application, operation of any provision of the agreement, the same shall be promptly submitted by such employee * * * to the Foreman of the Department in which the grievance arises." After providing for further processing of the grievance at different levels, it provides that if a satisfactory agreement on the complaint can not be reached, "the same shall be submitted to arbitration for a decision as hereinafter provided, and such decision shall be final and binding on both parties." Another paragraph of Article IV provides, "Any disputes, misunderstandings, differences or grievances arising between the parties as to the meaning, interpretation and application of the provisions of this agreement, which are not adjusted as herein provided, may be submitted to the Board of Arbitration for decision."

Appellant contends that the refusal of the appellee to restore Sparks to his former position in accordance with [fol. 100] his seniority rights is in effect a discharge for cause, which may be challenged by the employee under Article II. Appellee contends that under Article XIV Sparks' right to reemployment by reason of seniority is conditional upon his ability and efficiency being equal to that of other employees, and that by reason of his permanent, partial disability his ability and efficiency is not equal to that of other employees and that he is not physically able to perform the duties of the job. Appellant's reply to this is that Sparks' ability and efficiency is a factual issue about which the parties disagree. We are of the opinion that a dispute or difference exists between the parties, which, under Article IV, the appellant would be entitled to have submitted to arbitration, unless barred for the reason hereinafter discussed.

In *International Union, etc.*, v. *Benton Harbor Malleable Industries*, supra, 242 F. (2) 536, 540, C. A. 6th, cert. denied, 355 U. S. 814, we indicated, without deciding, that a frivolous, patently baseless claim is not sufficient to raise an arbitrable issue. In *Local No. 205, etc.*, v. *General Electric Co.*, 233 F. (2) 85, 101, C. A. 1st, affirmed, 353 U. S. 547, the Court expressed the same view. There is other authority to this effect. *Annotation*, 24 A. L. R. (2) 762, 764. See also: *Engineers Association* v. *Sperry Gyroscope Co., etc.*, 251 F. (2) 133, 136-137, C. A. 2nd. We believe that such a rule is applicable to this case.

In his petition in the Workmen's Compensation suit, filed May 10, 1957, and amended June 4, 1957, Sparks alleged that his usual employment required him to lift heavy objects from a rack about waist-high over his head and in order to do so was required to get in an awkward or strained position, that during the last part of January or the first part of February, 1956, while engaged in his usual employment, he suffered a ruptured intervertebral disc for which he received treatment at Campbell Clinic in Chattanooga, Tennessee, on sixty-six different days since February 6, 1956, that on or about March 29, 1957, while performing essentially the same type of work and again lifting a large frame, he again injured or reinjured his back and aggravated the condition above referred to, and since that date he had no longer been able to perform his duties.

On August 14, 1957, Sparks' personal physician who had performed an operation on Sparks advised that Sparks could not lift over thirty pounds of weight and made a [fol. 101] written report in which he stated that he believed Sparks would have permanent disability as far as his lumbar spine was concerned by reason of having had a herniated disc which necessitated surgery, and "I believe his disability was 55 or 60 per cent before surgery and I believe it is approximately 25 per cent at the present time. I also believe that his partial permanent disability will remain at about 25 per cent."

On August 28, 1957, Dr. Shelton examined Sparks for the appellee and reported that he estimated his permanent partial disability to be 25 per cent for the body as a whole for his particular type of work. On November 14, 1957, Dr.

Shelton again examined Sparks and made a detailed report in writing to the appellee which concluded with the statement, "I see no reason to change my opinion as stated on the examination of August 28, 1957. * * *, I see no change in the physical findings, so I see no reason to change my opinion as expressed on that examination. It is my opinion that he should not be placed on work requiring heavy lifting, or prolonged stooping or bending." An affidavit by the Plant Manager of the appellee stated that the appellee did not have any light jobs and that it had no work to provide Sparks where he would not be required to bend and stoop and lift, or where he would not at times have to lift weights totaling more than thirty pounds. This was supported by photographs taken in the normal course of operations showing the plating department where Sparks worked, typical work procedure necessary for men in the plating department and the heavy nature of part of the work required.

It will be noticed that the September 16, 1957, statement of Sparks' physician that "Mr. James Sparks is now able to return to his former duties without danger to himself or to others," makes no specific findings resulting from an examination subsequent to August 14, 1957, does not attempt to explain why the 25 per cent permanent disability existing on August 14, 1957, no longer existed, and in fact does not state that the 25 per cent permanent disability does not still exist. The statement that Sparks could return to work "without danger to himself or to others" falls far short of saying that he could return to his former position with "ability and efficiency" equal to that of other employees, which is necessary in order for him to claim his seniority rights under Article XIV. In fact, considered [fol. 102] in the light of the allegations of the complaint as amended in the Workmen's Compensation case, the kind of work Sparks would be required to do, and the findings in the three physical examinations made of Sparks during the preceding thirty-three days, it is so lacking in probative value with respect to the issue in this case as to compel the conclusion that the so-called claim or grievance is a frivolous, patently baseless one, not subject to arbitration under the collective bargaining agreement between the parties.

The judgment of the District Court is affirmed.

[fol. 103] Petition for rehearing covering 6 pages filed April 3, 1959 omitted from this print.

It was denied, and nothing more by order April 10, 1959.

[fol. 108]

IN UNITED STATES COURT OF APPEALS

ORDER DENYING REHEARING—Filed April 10, 1959

Appellant's petition for rehearing having been considered by the Court,

It Is Ordered that said petition be denied.

[fol. 109] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 110]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1958

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 4, 1959

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 28, 1959.

Potter Stewart, Associate Justice of the Supreme Court of the United States.

Dated this 4th day of June, 1959.

[fol. 111]

SUPREME COURT OF THE UNITED STATES

No. 360, October Term, 1959

[Title omitted]

ORDER ALLOWING CERTIORARI—November 9, 1959.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration or decision of this application.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 360

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

AMERICAN MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

AMERICAN MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on March 19, 1959.

OPINIONS BELOW

The opinion of the District Court is not reported. The opinion of the Court of Appeals is reported at 264 F. 2d 624. Both opinions are reproduced in the appendices to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on March 19, 1959. A petition for rehearing was denied on April 10, 1959. On June 4, 1959, Mr. Justice Stewart, Circuit Justice for the Sixth Circuit, issued an order extending time for filing a petition for certiorari in this case to and including August 28, 1959. This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U. S. C. §1254(1).

QUESTIONS PRESENTED

In an action under Section 301(a) of the Labor Management Relations Act to compel arbitration pursuant to a collective bargaining agreement which provides for arbitration of any grievance involving the interpretation or application of the collective bargaining agreement, is it the function of the federal court to examine the merits of the grievance sought to be arbitrated in order to determine whether it is well-based or baseless?

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. §185, provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

This action was brought by the United Steelworkers of America (hereinafter called the Union) against American Manufacturing Company (hereinafter called the Company) to specifically enforce the arbitration clause of the collective bargaining agreement in effect between the parties. (R. 6a-22a)[1] That agreement, like most collective bargaining agreements in the United States, contained a procedure for the adjustment of "any grievance as to the

[1] That portion of the record which is taken from the appendices to the briefs filed by the parties in the Court of Appeals is paginated in the manner in which the appendices were paginated: pages taken from the Appellant's appendix are numbered 1a to 61a, and pages from the Appellee's appendix are numbered 1b to 29b.

meaning, application, operation of any provision of the agreement." (R. 8a) In typical fashion, this procedure provided for several steps consisting of discussions between Union and Company representatives at ascending levels of authority, and it further provided that

> "*any* disputes, misunderstandings, differences or grievances arising between the parties as to the meaning, interpretation, and application of the provisions of this agreement, which are not adjusted as herein provided, may be submitted to the Board of Arbitration for decision." (R. 8a-9a, emphasis supplied.)

The grievance in this case involved an employee covered by the agreement, James B. Sparks, who had been off the job due to an injury suffered in the plant. While off work, he brought an action in a state court for workmen's compensation benefits. (R. 32a-33a) At that time, Sparks' physician expressed the opinion that the injury had resulted in a permanent partial disability of 25%. (R. 19b) The extent of permanent partial disability, if any, was an issue in that case, and was left unresolved when the claim was settled on September 9, 1957, by the entry of a consent decree awarding Sparks $3,006.24 plus medical and hospital fees and court costs. (R. 43a-44a)

Thereafter, Sparks applied for reinstatement to his job. He submitted a statement from his physician certifying that "Mr. James Sparks is now able to return to his former duties without danger to himself or to others." (R. 53a) The Company refused to reinstate him. On September 23, 1957, the Union filed a grievance (R. 22a-23a) asserting that Sparks was entitled to return to his job by virtue of Article XIV, Seniority, of the collective bargaining agreement, which provided:

> "The Company and the Union fully recognize the principle of seniority as a factor in the selection of employees for promotion, transfer, lay-off, re-employment,

and filling of vacancies, where ability and efficiency are equal." (R. 13a)

No settlement was reached, and on October 21, 1957, the Union wrote the Company that it intended to submit the question to arbitration. (R. 49a) In the same letter, the Union, in accordance with the procedure established in the agreement, submitted the name of one person whom it had selected to sit on the Board of Arbitration which would hear the dispute. On October 28, the Company's attorney notified the Union that he would be the Company's representative on the Board of Arbitration. (R. 47a) The Union then submitted to the Company a list of names of possible impartial members of the Board. (R. 50a)

On October 29, the Company requested a delay in the selection of arbitrators in order to enable its own doctor to re-examine Sparks. (R 47a) The examination was held, and the Company's doctor reported that in his view Sparks "should not be placed on work requiring heavy lifting, or prolonged stooping or bending." (R. 7b) "Under these circumstances" the Company declined to arbitrate (R. 4b), and it informed the Union that it considered the grievance not arbitrable, "since a Hamilton County Circuit Court has adjudicated the matter." (R. 49a)

The Union then filed the present action to compel arbitration. (R. 2a) After the Company filed its answer (R. 25a), the Union moved for summary judgment. (R. 45a) The case was argued and submitted on the basis of the pleadings and affidavits filed by the parties.

The Company contended that it was not obligated to arbitrate the issue of Sparks' right to reinstatement because Sparks' attorney and physician had asserted in connection with the workmen's compensation proceeding that Sparks was 25% permanently disabled. The Company also raised as a defense the fact that a settlement decree had been entered in that case, although the decree itself stated that "there is a serious dispute between the parties as to the

amount of temporary total disability suffered by the complainant and also as to the amount of permanent partial disability sustained by the complainant." (R. 43a)

The Union, while disputing the Company's arguments based on the workmen's compensation proceeding, urged that these arguments related only to the merits of the grievance and should thus be made before the Board of Arbitration. The question before the court, the Union urged, was simply whether there was an unresolved dispute involving the application of Article XIV of the agreement in the Sparks case.

The district court and the court of appeals each upheld the Company. The district court granted summary judgment for the Company on the ground that the Union was estopped from asserting that Sparks was equal in "efficiency and ability" to other employees because of his contrary position in the earlier workmen's compensation proceedings. The court of appeals affirmed, although it expressly disagreed with the lower court's reasoning.

The opinion of the court of appeals began by rejecting the estoppel theory on which the district court had based its decision, stating that "if the grievance is an arbitrable one under the agreement, appellant has the right to have this issue, including appellee's defense of estoppel, decided by the arbitrators instead of by the Court." (Appendix B p. 25, 264 F. 2d at 626) The court then dismissed the Company's contention that the issue raised by the grievance had been settled by the consent judgment in the workmen's compensation case, pointing out that "the nature and extent of Sparks' injuries were not judicially determined." (Appendix B p. 26, 264 F. 2d at 626)

Having disposed of those preliminary issues, the court turned to an examination of the applicable provisions of the collective agreement, and concluded that the dispute between the parties concerned the proper application of the seniority Article in Sparks' case, and was therefore a dis-

pute which "the appellant would be entitled to have submitted to arbitration, unless barred for the reason hereinafter discussed."

At this point, the court examined the evidence concerning Sparks' physical condition and the kind of work which is performed in the Company's plant. It considered the allegations in Sparks' workmen's compensation complaint as to the nature of the work he had performed and the nature of his injury, it reviewed the various medical reports which both the Company's and Sparks' doctors had made at various times concerning Sparks' condition, and it cited the affidavit of the Plant Manager which described the work which Sparks would do if he were reinstated and which was accompanied by photographs showing work procedure in the plant. Against this evidence it weighed the statement of Sparks' doctor that Sparks was able to return to work, and concluded that

> "in the light of the allegations of the complaint as amended in the Workmen's Compensation case, the kind of work Sparks would be required to do, and the findings in the three physical examinations made of Sparks in the preceding thirty-three days, it is so lacking in probative value with respect to the issue in this case as to compel the conclusion that the so-called claim or grievance is a frivolous, patently baseless one, not subject to arbitration under the collective bargaining agreement between the parties." (Appendix B p. 30, 264 F. 2d at 628)

The court did not hold that under the agreement the Union could never compel arbitration of a claim that an employee, laid off due to injury, was sufficiently recovered to be entitled to reinstatement. Rather, it held that an issue which would otherwise be arbitrable will be rendered not arbitrable if the court, after examining the evidence relevant to the determination of that issue on its merits, decides that

the evidence is so overwhelmingly in favor of the Company's position that the Union's claim is baseless.

REASONS FOR GRANTING THE WRIT

1. This case presents an important question of federal law which has not been, but should be settled by this Court. The broad issue in this case is one which necessarily arises in every action under Section 301 to compel arbitration pursuant to an arbitration provision in a collective bargaining agreement. That is the question of how the court should determine whether the dispute which is sought to be arbitrated is "arbitrable" under the agreement involved. The aspect of that question which has most frequently arisen, and which has caused the greatest amount of difficulty, is whether it is the function of the court, before compelling arbitration, to examine the merits of the dispute in order to determine whether the Union's claim is soundly based, or whether the court should compel arbitration regardless of its view of the merits of the particular dispute, so long as it is the kind of dispute covered by the arbitration clause of the agreement. That is the question which this case squarely raises.

The issue is one which has long been a subject of litigation in the state courts, and of discussion by legal commentators. In 1947, the New York Court of Appeals rendered a per curiam affirmance of a decision which has become the leading case in support of the approach taken in the present case. The holding of the New York Appellate Division, which the Court of Appeals affirmed, was that "the mere assertion by a party of a meaning of a provision which is clearly contrary to the plain meaning of the words cannot make an arbitrable issue. . . . If the meaning of the provision of the contract sought to be arbitrated is beyond dispute, there cannot be anything to arbitrate and the contract cannot be said to provide for arbitration." *International Ass'n of Machinists* v. *Cutler-Hammer, Inc.*, 67

N.Y.S. 2d 317, 271 App. Div. 917 (1st Dep't) *aff'd*, 297 N. Y. 519, 74 N. E. 2d 464 (1947). This theory has become known as the *Cutler-Hammer* doctrine. Very few legal theories have been the subject of as much commentary, or as much criticism.[2] Students of arbitration agree —virtually unanimously—that the entire purpose of the arbitration process is subverted if the court refuses to compel arbitration of a dispute on the ground that one party's position in that dispute is unsound, since this is just the sort of judgment the parties have agreed that only the arbitrator should make. In accordance with this view, the draftsmen of the Uniform Arbitration Act have eliminated the possibility of a *Cutler-Hammer* result by providing in section 2(c) that

> "an order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown."

Recent New York decisions have been interpreted by some observers as retreating from the *Cutler-Hammer* view,[3] but

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[2] See, e.g., Freidin, Labor Arbitration and the Courts 7 (1952); Mayer, *Judicial "Bulls" in the Delicate China Shop of Labor Arbitration*, 2 Lab. L. J. 502 (1951); *Report of Committee on Arbitration of National Academy of Arbitrators*, 16 Lab. Arb. 994 (1951); Summers, *Judicial Review of Labor Arbitration or Alice Through the Looking Glass*, 2 Buff. L. Rev. 1 (1952); Kharas, *Labor Arbitration—The Arbitrable Issue*, N. Y. U. Fifth Annual Conference on Labor 663 (1952); Cox, *Legal Aspects of Labor Arbitration in New England*, 8 Arb. J. 5 (1953); Gross, *Judicial Control of Arbitrator's Jurisdiction in New York*, 38 Corn L. Q. 391 (1953); Mayer, *Arbitration and the Judicial Sword of Damocles*, 4 Lab. L.J. 723 (1953); Note, *Judicial Innovations in the New York Arbitration Law*, 21 U. of Chi. L. Rev. 148 (1953); Rosenfarb, *The Courts and Arbitration*, N. Y. U. Sixth Annual Conference on Labor 161 (1953).

[3] See Note, 10 Syracuse L. Rev. 278 (1959); Kharas & Koretz, *Judicial Determination of the Arbitrable Issue*, 11 Arb. J. 135 (1956). The cases which seem inconsistent with *Cutler-Hammer* are *Matter of Bohlinger*, 305 N. Y. 539, 114 N.E. 2d 31 (1953); *Matter of Teschner*, 309 N.Y. 972, 132 N.E. 2d 333 (1956); *Matter of Potoker*, 2 N.Y. 2d 553, 141 N.E. 2d 841 (1957).

as the present case illustrates, the doctrine still is widely followed.

The issue has been a great source of uncertainty, and therefore of unnecessary litigation, in the federal courts since the decision of this Court in *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448 (1957), holding that Section 301 of of the Labor-Management Relations Act authorized specific enforcement of arbitration provisions in collective bargaining agreements. In most suits under Section 301 since that time the question presented here has been raised, and the courts have resolved it in a variety of different ways. The paramount importance of this question under Section 301 has been widely recognized. See Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482 (1959); Note, *Some Problems Relating to Judicial Protection of the Right to Have Arbitration Agreements Enforced Under Section 301(a) of the Taft-Hartley Act*, 59 Colum. L. Rev. 153 (1959); Note, *Judicial Determination of Arbitrability—A Survey of the Federal Cases under Section 301 of the Taft-Hartley Act*, 10 Syracuse L. Rev. 278 (1959).

Most of the federal decisions have started from the premise that the question whether the particular dispute involved is made arbitrable by the agreement is a preliminary question which the court must decide, and is not one which the court can require the parties to submit to the arbitrator. *E.g., Local 149, American Fed. of Technical Engineers* v. *General Elec. Co.*, 250 F. 2d 922 (1st Cir. 1957), *cert. denied*, 356 U. S. 938 (1958). There is some authority, however, for the view that "questions as to the arbitrability of . . . disputes are initially for the arbitrators and if they reach a wrong conclusion in that regard it is subject to correction by a court." *Food Handlers Local 425* v. *Pluss Poultry, Inc.*, 260 F. 2d 835, 838 (8th Cir. 1958). See also *Insurance Agents Int'l Union* v. *Prudential Ins. Co.*, 122 F. Supp. 869 (E. D. Pa. 1954); *United Cement Workers* v.

Allentown Portland Cement Co., 30 Lab. Arb. 812 (E. D. Pa. 1958). Since the issue of arbitrability is itself an issue as to the interpretation and application of the agreement, the view that it should be decided by the arbitrator would appear to have merit. See 72 Harv. L. Rev. 577 (1959). Such an approach would, of course, eliminate the *Cutler-Hammer* problem, but it is not one which has so far found much acceptance in the lower federal courts.

Among the majority of federal decisions in this area, which hold that arbitrability is a question for the court, there is a great difference of opinion as to how a court should decide whether a particular dispute is arbitrable. It is clear that "the *Cutler-Hammer* doctrine is not an inescapable logical consequence of the rule that the Court must determine the question of arbitrability." Cox, *Current Problems in the Law of Grievance Arbitration*, 3 Rocky Mt. L. Rev. 247, 261 (1958). Nevertheless, a number of federal courts, like the Sixth Circuit in the present case, have adopted the *Cutler-Hammer* view that at least a preliminary inquiry into the merits of a grievance must be made in order to determine whether it is "baseless" or "frivolous." *E.g., American Stores Co.* v. *Johnston*, 171 F. Supp. 275 (S.D., N.Y. 1959) (grievance held not arbitrable), *Butte Miners Union* v. *Anaconda Co.*, 159 F. Supp. 431 (D. Mont. 1958), *aff'd per curiam*, 44 L.R.R.M. 2475 (9th Cir., June 30, 1959) (grievance held arbitrable).

Other cases are apparently based on the same premise, although they do not expressly state it. For example, in *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 44 L.R.R.M. 2567 (5th Cir., July 30, 1959) the court held not arbitrable a grievance which alleged that the Company had violated the collective agreement when it subcontracted work formerly done in the bargaining unit, on the ground that in the court's view the agreement did not restrict the Company's right to subcontract. This seems to be essentially a holding that the grievance is not arbitrable because

the Union's position on the merits is "baseless." To the same effect is *Kroger Co.* v. *Local No. 347, Amalgamated Meat Cutters,* 41 L.R.R.M. 2545 (S.D., W.Va., Jan. 30, 1958), in which the court held not arbitrable a union's claim that permitting outside salesmen to do certain work in the store violated the agreement. There also the court held that the contract when read in the context of prior union-company negotiations did not restrict management's right to allow work to be done by outsiders.

Other decisions by federal courts seem to conflict with the decisions cited above. The case which is most clearly in conflict with the *Cutler-Hammer* view is *New Bedford Defense Prod. Div.* v. *Local No. 1113, UAW,* 258 F. 2d 522 (1st Cir. 1958). There the Court expressly rejected the notion that an issue ceases to be arbitrable when "its correct disposition on the merits . . . [is] clear under the terms of the agreement."

> "[We] think that the jurisdiction of the arbitrator, whose judgment is invoked in the collective bargaining agreement instead of that of the court, is similar to a court's jurisdiction. If the subject matter of a claim is within the court's jurisdiction, the court does not lose its jurisdiction because of the fact that the proper disposition of the claim may be crystal-clear under the law. Indeed, if in the present case the grievance in question is confided to an arbitrator by the collective bargaining agreement, the court in a § 301 proceeding has no business to concern itself with a preliminary question whether the answer to the grievance on its merits may or may not be entirely clear under the language of the agreement." 258 F. 2d at 526.

A decision of the Fifth Circuit seems to take a position in accord with the *New Bedford* case, and apparently inconsistent with that court's more recent decision in the *Warrior & Gulf case.* In *Local 12, IAM* v. *Cameron Iron Works,*

257 F. 2d 467, *cert. denied*, 358 U. S. 880 (1958), that court, speaking through Judge Rives, stated the rules governing arbitrability as follows:

> We consider the general rule to be that a dispute between labor and management is arbitrable where the dispute is specifically contracted to be arbitrable or generally where the contract expresses a broad arbitration policy, i.e., a general arbitration clause; but controversies are not arbitrable where the controversy in question is specifically excluded, where because of a listing of many arbitrable incidences the instant controversy is impliedly excluded, and where the controversy or grievance concerns violation of a 'no strike' clause. 257 F. 2d at 471.

This language seems inconsistent with the view that a grievance is not arbitrable if the court considers it frivolous or baseless. And it is noteworthy that Judge Rives dissented in *Warrior & Gulf*.

The Sixth Circuit itself, in an earlier case, seemed to take a position diametrically opposed to its holding in the present case. In *Timken Roller Bearing Co.* v. *NLRB*, 161 F. 2d 949 (6th Cir. 1947) the court ruled that a grievance concerning subcontracting was subject to the grievance procedure and arbitration, although "the practical construction put upon the management clause by both parties was, without controversy in the record, that subcontracting was a function of management." It was sufficient, the Court said, that "the dispute as it finally developed, was a dispute as to the interpretation of the management clause, and the contract specifically provided that such disputes were to be settled within the grievance procedure, and if they failed, by arbitration." 161 F. 2d at 955.

There are many other federal cases dealing with the problem presented here. Those which we have discussed, however, are sufficient to illustrate that the issue is a troublesome

one which often arises and which has been decided by the federal courts in a variety of different ways.

In *Lincoln Mills*, this Court resolved a long-standing issue of great importance—the issue of the enforceability of arbitration agreements under Section 301. The major issue which remains undecided is the one presented here—whether the federal courts, in applying *Lincoln Mills*, should order arbitration if they find, as the court of appeals here found, that the dispute is of the kind covered by the arbitration agreement, or whether they should go further, as the court here did, and examine the merits of the grievance. The importance of the issue, its bearing in every suit to compel arbitration under Section 301, and the confusion which exists in the lower federal courts, make it clear that the issue is one which should be resolved by this Court.

2. As the discussion above illustrates, the decision of the Sixth Circuit in the present case is in direct conflict with a decision of the First Circuit. The Sixth Circuit has held in the present case that a grievance may involve a dispute which falls within the scope of the arbitration provision, and yet it will not be "arbitrable" if the court, after examining the evidence as to the merits of the grievance to judge its "probative value," determines that the Union's position on the merits is baseless or frivolous. The court explicitly stated with reference to the grievance presented in this case that "a dispute exists between the parties, which, under Article IV, the appellant would be entitled to have submitted to arbitration unless barred for the reason hereinafter discussed." 265 F. 2d at 627. That reason was that the grievance was "baseless."

The First Circuit, in the *New Bedford* case, took the position that if "the grievance in question is confided to an arbitrator by the collective bargaining agreement, the Court in a § 301 proceeding has no business to concern itself with a preliminary question whether the answer to the grievance

on its merits may or may not be entirely clear under the language of the agreement." 258 F. 2d at 526. That there is a conflict between these two cases was recognized by Judge Rives in his dissent in *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 44 L.R.R.M. 2567, 2572 n. 8 (1959).

In addition, the Second Circuit has adopted an approach to the question of arbitrability which seems to be half-way between the Sixth Circuit's position and that of the First Circuit. In *Engineers Ass'n* v. *Sperry Gyroscope Co.*, 251 F. 2d 133 (2d Cir. 1957) *cert. denied*, 356 U. S. 932 (1958), the court held that the grievance there involved would be arbitrable if the union produced "some evidence which tends to establish" its claim. "Once the tendency of the evidence to support the claim has been established," the court said, "it is then the function of the arbitrator to weigh all the evidence and to then determine whether the contract was broken." 251 F. 2d at 137. In the present case, it will be remembered, the Union did present "some evidence" that Sparks was capable of returning to work. It presented the statement of Sparks' physician to that effect. That would apparently have been sufficient under the *Sperry Gyroscope* decision, but the Sixth Circuit held that the Union must not only produce some evidence, but evidence of sufficient "probative value" to persuade the court that the grievance is not baseless.

In short, the Sixth Circuit and other federal courts have applied the *Cutler-Hammer* doctrine in actions to compel arbitration under § 301, the First Circuit has rejected that doctrine, and the Second Circuit has adopted a modified version of it. This conflict between the Courts of Appeals on this important issue can be resolved only by this Court.

3. The decision of the Court of Appeals in the present case conflicts with the decision of this Court in *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448 (1957). In the present case, the court refused to compel arbitration, al-

though it recognized the fact that the grievance involved was the kind which was covered by the arbitration clause, on the ground that the union's position on the merits was "baseless." In effect, the court refused to enforce the arbitration clause and imposed a limitation on the right to compel arbitration which is nowhere mentioned in *Lincoln-Mills*, and which is completely inconsistent with the Congressional policy on which the Court based its decision in that case.

Perhaps there may be some basis for limiting the enforceability of commercial arbitration agreements in this way, but this Court has ruled that questions arising under Section 301 were to be resolved with reference to "the policy of our national labor laws." 353 U. S. at 456. The very policy on which the Court based its holding in *Lincoln Mills* requires a result opposite to that reached by the Sixth Circuit here. That is the policy favoring arbitration as a substitute for the strike, and favoring the encouragement of arbitration and no-strike agreements.

This Court quite rightly held that that policy will be furthered by compelling the parties to resolve their disputes in the manner in which they have agreed to resolve them. The policy will be hindered, however, if on the pretense of determining "arbitrability" the courts attempt to resolve controversies which the parties have agreed will be resolved by arbitration. If a union's action to compel arbitration of a grievance which is within the scope of the arbitration clause is met only by a rebuke from the court for bringing a "baseless" grievance, the attractiveness to that union of arbitration as a substitute for the strike will hardly be enhanced.

Moreover, the *Lincoln Mills* case certainly did not intend to make a potential federal question out of every industrial grievance. Yet if a court must determine whether or not a grievance is "baseless" before it compels arbitration, it will necessarily have to conduct a hearing on the merits of the

particular dispute. To require the parties to litigate the merits of a grievance twice not only would be an unwarranted burden on them, it would be a burden on the federal courts. Furthermore, most courts are not equipped to evaluate these disputes. The application of collective bargaining agreements to particular industrial situations requires a kind of expertise that few courts have. See Shulman, *Reason, Contract, and Law in Labor Relations,* 68 Harv. L. Rev. 999 (1955); Cox, *Reflections Upon Labor Arbitration,* 72 Harv. L. Rev. 1482 (1959). And even if a court's evaluation of the grievance is correct, the parties are entitled to have that judgment made in the forum they have chosen for that purpose.

Decisions such as the present one have led some students of labor relations to conclude that the institution of grievance arbitration will be hindered rather than helped by the *Lincoln Mills* decision. At a recent meeting of the National Academy of Arbitrators, one leading labor arbitrator expressed his concern as follows:

> "Each week the advance sheets bring us fresh examples of the judicial mind at work on disputes over arbitration. Typically, the issue is one of arbitrability, and the suit is usually initiated either by a union seeking to compel arbitration or by an employer attempting to prevent it. There is also a certain amount of litigation to confirm or set aside arbitration awards; but these cases do not seem to me to present a serious problem. Some of the decisions involving arbitrability, however, are based on reasoning not dreamt of in any arbitrator's philosophy. From *Cutler-Hammer* to *Warrior & Gulf Navigation Company* the story is the same: under the guise of determining arbitrability, the court disposes of the merits of the case, usually by finding the relevant language of the collective bargaining agreement so clear in meaning and so ineluctable in effect that, it would seem, only idiots and arbitrators

could profess to see in it a lurking ambiguity giving rise to an arbitrable issue." Aaron, *On First Looking into the Lincoln Mills Decision,* Arbitration and the Law—Proceedings of the Twelfth Annual Meeting National Academy of Arbitrators 1, 7-8 (1959).

It is certainly ironic that the *Lincoln Mills* decision, which was intended to promote grievance arbitration, is now being criticized in some quarters as being detrimental to the arbitration process. In our view that criticism is misdirected. It is not *Lincoln Mills* but the failure of some courts to apply *Lincoln Mills* properly which has led both to unnecessary litigation in the federal courts and to unwarranted judicial interference with the arbitrator's jurisdiction. That failure should be corrected in this case.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

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August 28, 1959.

APPENDIX A

In the

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Tennessee

Southern Division

UNITED STEELWORKERS OF AMERICA

v.

AMERICAN MANUFACTURING COMPANY

Civil Action No. 3147

This is a suit filed by a labor union seeking performance of a contract between that union, the United Steelworkers of America, and the American Manufacturing Company. It is alleged that the Company refused to arbitrate a dispute involving one James Sparks, an employee covered by the contract. See *American Lava Corp. v. Local Union No. 222, Etc.* (6th C. A.) 250 F. 2d 137.

The Company maintains that Sparks, having arranged a settlement of a workmen's compensation case against the Company providing that he is permanently partially disabled, is estopped from asserting his seniority rights as an employee; denies that Sparks is physically able to do the work required of his former job, and contends that the contract does not provide for arbitration of this type of dispute.

The contract provides, in Article II, that—"The management of the works, . . . including the right to hire, suspend, transfer, discharge, or otherwise discipline any employee for cause, such cause being . . . any other ground or reason that would tend to reduce or impair the efficiency of plant operation . . . is reserved to the Company."

The contract also provides, in Article XIV, that . . . "The Company and the Union fully recognize the principle of seniority as a factor in the selection of employees for . . .

re-employment and filling of vacancies, where ability and efficiency are equal."

The Union contends that the Company violates the above seniority provision in refusing to re-employ Sparks in his former position.

It is admitted that he left his position on account of illness which disabled him, and that he has been awarded workmen's compensation based on a twenty-five per cent partial permanent disability. This award was made in settlement of a claim made by Sparks.

This settlement was approved by the Circuit Court of Hamilton County on September 9, 1957. On September 23, 1957, a grievance was filed on behalf of James Sparks indicating that he was released on September 16, 1957, in violation of his seniority rights.

Can an employee contend, in a workmen's compensation claim, that he is at least twenty-five per cent totally disabled, and based upon that claim, accept a substantial cash settlement from his employer, and then, within a few days, force the employer to grant to him full seniority rights, or any rights as an employee?

This is not a situation where an employee has been discharged or disciplined for cause under Article III, although it approaches a discharge for reduction in the efficiency in plant operation.

This is a situation where Article XIV, Seniority, applies. The basic question is, can Sparks contend—and this means contend, not prove—that his ability and efficiency are equal to that of the other employees when he has very recently contended, in court, that he is partially permanently disabled; and the Company, relying on that contention, has settled on him a substantial sum of money to recompense him for that disability.

Res judicata is not involved. This same question has not been before any court.

Judicial estoppel may be involved. In the case of *South-*

ern Coal & Iron Co. v. Schwoon, 145 Tenn. 191, at page 226, the Supreme Court of Tennessee said: "The rule that a party will not be allowed to maintain inconsistent positions in judicial proceedings is not strictly one of estoppel, partaking rather of positive rules of procedure based on manifest justice, and to a greater or less degree on the orderliness, regularity, and expedition of litigation." The court there distinguishes between equitable and judicial estoppel, the only difference being that equitable estoppel is available only where a party is prejudiced. Since, in the case now before this Court, the Company would be prejudiced if it were required to hire, as physically unimpaired, a former employee who had received a lump sum payment for a disability the term of which coincided with the term of proposed service, it is only necessary to determine whether an estoppel, equitable or judicial, applies.

Section 67 of the third edition of Gibson's Suits in Chancery describes an estoppel in the following manner— "Whenever A, by acts, words, or silence, intentionally causes or permits B to do a thing he would not otherwise have done, it would be manifestly inequitable for A, by repudiating the very conduct by which he induced B to act, and by setting up rights of his own, inconsistent with his said conduct, to compel B to incur a loss by undoing the very thing A's conduct caused him to do." This definition clearly covers the situation now before this Court.

The defendant has filed a brief opposing the plaintiff's motion for summary judgment, and in its brief his made a motion for summary judgment on its behalf. While this informal way of submitting a motion for summary judgment is not to be encouraged, yet the Court will consider it as such.

Rule 56 (c), Federal Rules of Civil Procedure, provides that a judgment may be rendered summarily where there is no genuine issue of any material fact, and "that the moving party is entitled to a judgment as a matter of law."

The Court is of the opinion that all the facts are within the record and there is no dispute pertaining thereto. Therefore, the case is a proper one for action upon a motion for summary judgment.

For the reasons heretofore announced, the motion of the plaintiff for summary judgment is denied and the motion of the defendant for a summary judgment is granted, and there will be an order accordingly.

LESLIE R. DARR,
United States District Judge.

In the
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Tennessee
Southern Division

UNITED STEELWORKERS OF AMERICA v. AMERICAN MANUFACTURING COMPANY	Civil Action No. 3147

ORDER

This case came on to be heard on the motion of the plaintiff for Summary Judgment, and on the affidavits filed in support of and in opposition to said motion, and the pleadings and the exhibits filed; and the motion having been fully presented on hearing before the Court, and by briefs of counsel for the respective parties; and the defendant having made an informal motion for summary judgment in its behalf;

The Court being of the opinion that the case is a proper one for action upon a motion for summary judgment, and that plaintiff's such motion should be denied, but that defendant is entitled to a judgment in its favor as a matter of law, and that summary judgment should be rendered for

the defendant, now for the reasons set out in the Court's memorandum opinion, it is therefore

Ordered, Adjudged and Decreed that summary judgment be entered in favor of the defendant, American Manufacturing Company and against the plaintiff, United Steelworkers of America, and that the complaint be and it is hereby dismissed on the merits with costs.

Enter:

.....

United States District Judge.

Approved for Entry:

HAROLD M. HUMPHREYS and
STRANG, FLETCHER, CARRIGAN &
WALKER,

By JOHN CARRIGAN,
Attorneys for Defendant.

APPENDIX B

No. 13,666

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

UNITED STEELWORKERS OF AMERICA, *Appellant*, v. AMERICAN MANUFACTURING COMPANY, *Appellee*.	Appeal from the United States District Court for the Eastern District of Tennessee, Southern Division.

Decided March 19, 1959

BEFORE: ALLEN, McALLISTER and MILLER, Circuit Judges.

MILLER, Circuit Judge. This action was brought by the appellant, a labor organization, under Sec. 301 (a) of the Labor-Management Relations Act of 1947, Sec. 185 (a), Title 29, U. S. Code, to compel the appellee employer to arbitrate a grievance as provided by the provisions of a collective bargaining agreement between the parties. The District Judge denied the relief prayed for and entered summary judgment for the appellee.

The grievance, upon which arbitration was sought, arose out of the following circumstances. On or about March 29, 1957, James Sparks, an employee of the appellee and who was a plating tank operator, suffered a work-connected injury to his back. It was necessary for Sparks to discontinue his employment by reason of this injury. By virtue of proceedings under the Workmen's Compensation Act of Tennessee, Sparks obtained a compromise settlement and award under which the appellee was ordered to pay to Sparks in addition to the payment of certain hospital and

medical expenses in the total amount of $541.80, the sum of $3,006.24, which compromise award was approved by the State Court having jurisdiction of the cause on September 9, 1957. This settlement was negotiated and effected upon the representation of Sparks' attorney and the written report of Sparks' physician made on August 14, 1957, that Sparks had a permanent partial disability to his spine of about 25 per cent. The court order approving the settlement and making the award referred to the serious dispute between the parties as to the amount of temporary total disability and as to the amount of permanent partial disability suffered by Sparks, but made no finding with respect thereto.

The award was promptly paid. Some two weeks thereafter Sparks applied to be returned to his old job with the appellee, taking the position that he was fully capable of performing all of the duties involved in the job. This position was based in part upon a written and signed statement of September 16, 1957, by the same physician who made the report of August 14, 1957, reading as follows: "To Whom It May Concern: Mr. James Sparks is now able to return to his former duties without danger to himself or to others." On September 23, 1957, the appellant filed a Grievance, demanding that the appellee return Sparks to his regular job and pay him for all time lost since September 16, 1957. On October 30, 1957, appellee's attorneys wrote Sparks, sending a copy to his attorney, that his present position with regard to his capability to do the work was inconsistent with his position taken in the compensation case and requested a conference. No answer to this letter was received from Sparks or his attorney. On November 19, 1957, appellee wrote the appellant, "The Company feels at this time that the James Sparks question is not arbitrable, since a Hamilton County Circuit Court has adjudicated the matter." This action followed on December 19, 1957.

The District Judge was of the opinion that the appellee would be prejudiced if it was required to hire, as physically unimpaired, a former employee who had received a lump sum payment for a disability, the term of which coincided with the term of proposed service, and that it would be manifestly inequitable for Sparks, by repudiating the very conduct by which he induced the appellee to act, to now take a position inconsistent with such conduct and compel appellee to incur a loss. Applying the foregoing principle of estoppel he sustained appellee's motion for summary judgment.

It may be that the principle of estoppel is applicable to this case and would bar Sparks from reinstatement to his former position. But appellant contends that the District Court did not have the authority or jurisdiction to make such a ruling. The collective bargaining agreement did not confer such authority upon it. On the contrary, Article IV of that agreement providing for grievance procedure states that if a satisfactory agreement with respect to a complaint can not be reached through the procedure provided, "the same shall be submitted to arbitration for a decision as hereinafter provided, and such decision shall be final and binding on both parties." If the grievance is an arbitrable one under the provisions of the collective bargaining agreement, appellant has the right to have this issue, including appellee's defense of estoppel, decided by the arbitrators instead of by the Court. *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448; *Local 19, Warehouse, etc.*, v. *Buckeye Cotton Oil Co.*, 236 F. (2) 776, C. A. 6th.

We recognize that under the ruling of this Court the question of whether an issue is an arbitrable one under the collective bargaining agreement is a question of law for determination by the Court. *International Union, etc.*, v. *Benton Harbor Malleable Industries*, 242 F. (2) 536, 539-540, C. A. 6th, cert. denied, 355 U. S. 814; *Local No. 149,*

etc., v. *General Electric Co.*, 250 F. (2) 922, C. A. 1st, cert. denied, 356 U. S. 938. In *American Lava Corporation* v. *Local Union No. 222, etc.*, 250 F. (2) 137, C. A. 6th, we held the grievance there involved to be arbitrable and required the employer to arbitrate. We did not, however, attempt to adjudicate the grievance on its merits.

Nor do we think that arbitration could be denied as a matter of law on the ground relied upon by the appellee, namely, that the issue involved had previously been adjudicated by the Hamilton County Circuit Court. Contrary to appellee's contention, there has been no adjudication that Sparks was 25 per cent permanently disabled. The State Court judgment in the Workmen's Compensation proceeding referred to the dispute existing between the parties with respect to the injuries and approved a compromise settlement without making a finding on the extent of the injuries. The question of estoppel may be involved but the nature and extent of Sparks' injuries were not judicially determined.

However, it is settled law that the judgment of the trial court should be affirmed if the appellate court is of the opinion that it is correct, even though for reasons different from those relied upon by the trial judge. *Helvering* v. *Gowran*, 302 U. S. 238, 245; *J. E. Riley Investment Co.* v. *Commissioner*, 311 U. S. 55, 59. If the grievance was not an arbitrable one as a matter of law, the judgment dismissing the action must be affirmed. *International Union, etc.*, v. *Benton Harbor Malleable Industries*, supra, 242 F. (2) 536, C. A. 6th, cert. denied, 355 U. S. 814. Accordingly, we consider that question.

Article XIV of the collective bargaining agreement states that the company and the Union fully recognize the principle of seniority as a factor in reemployment and filling of vacancies "where ability and efficiency are equal."

Article II provides, "If any discharged * * * employee contends that he was not guilty of the cause given, he

may question his discharge by filing written protest within three (3) working days from the date of his discharge * * *. Should the parties fail to agree the arbitration clause may be invoked."

Article IV provides the Grievance Procedure and Arbitration. It states, "If any employee * * * shall have any grievance as to the meaning, application, operation of any provision of the agreement, the same shall be promptly submitted by such employee * * * to the Foreman of the Department in which the grievance arises." After providing for further processing of the grievance at different levels, it provides that if a satisfactory agreement on the complaint can not be reached, "the same shall be submitted to arbitration for a decision as hereinafter provided, and such decision shall be final and binding on both parties." Another paragraph of Article IV provides, "Any disputes, misunderstandings, differences or grievances arising between the parties as to the meaning, interpretation and application of the provisions of this agreement, which are not adjusted as herein provided, may be submitted to the Board of Arbitration for decision."

Appellant contends that the refusal of the appellee to restore Sparks to his former position in accordance with his seniority rights is in effect a discharge for cause, which may be challenged by the employee under Article II. Appellee contends that under Article XIV Sparks' right to reemployment by reason of seniority is conditional upon his ability and efficiency being equal to that of other employees, and that by reason of his permanent, partial disability his ability and efficiency is not equal to that of other employees and that he is not physically able to perform the duties of the job. Appellant's reply to this is that Sparks' ability and efficiency is a factual issue about which the parties disagree. We are of the opinion that a dispute or difference exists between the parties, which, under Article IV, the appellant would be entitled to have submitted

to arbitration, unless barred for the reason hereinafter discussed.

In *International Union, etc.*, v. *Benton Harbor Malleable Industries*, supra, 242 F. (2) 536, 540, C. A. 6th, cert. denied, 355 U. S. 814, we indicated, without deciding that a frivolous, patently baseless claim is not sufficient to raise an arbitrable issue. In *Local No. 205, etc.*, v. *General Electric Co.*, 233 F. (2) 85, 401, C. A. 1st, affirmed, 353 U. S. 547, the Court expressed the same view. There is other authority to this effect. *Annotation*, 24 A. L. R. (2) 762, 764. See also: *Engineers Association* v. *Sperry Gyroscope Co., etc.*, 251 F. (2) 133, 136-137, C. A. 2nd. We believe that such a rule is applicable to this case.

In his petition, in the Workmen's Compensation suit, filed May 10, 1957, and amended June 4, 1957, Sparks alleged that his usual employment required him to lift heavy objects from a rack about waist high over his head and in order to do so was required to get in an awkward or strained position, that during the last part of January or the first part of February, 1956, while engaged in his usual employment, he suffered a ruptured intervertebral disc for which he received treatment at Campbell Clinic in Chattanooga, Tennessee, on sixty-six different days since February 6, 1956; that on or about March 29, 1957, while performing essentially the same type of work and again lifting a large frame, he again injured or reinjured his back and aggravated the condition above referred to, and since that date he had no longer been able to perform his duties.

On August 14, 1957, Sparks' personal physician who had performed an operation on Sparks advised that Sparks could not lift over thirty pounds of weight and made a written report in which he stated that he believed Sparks would have permanent disability as far as his lumbar spine was concerned by reason of having had a herniated disc which necessitated surgery, and "I believe his disability was 55 or 60 per cent before surgery and I believe it is

approximately 25 per cent at the present time. I also believe that his partial permanent disability will remain at about 25 per cent."

On August 28, 1957, Dr. Shelton examined Sparks for the appellee and reported that he estimated his permanent partial disability to be 25 per cent for the body as a whole for his particular type of work. On November 14, 1957, Dr. Shelton again examined Sparks and made a detailed report in writing to the appellee which concluded with the statement, "I see no reason to change my opinion as stated on the examination of August 28, 1957. * * * I see no change in the physical findings, so I see no reason to change my opinion as expressed on that examination. It is my opinion that he should not be placed on work requiring heavy lifting, or prolonged stooping or bending." An affidavit by the Plant Manager of the appellee stated that the appellee did not have any light jobs and that it had no work to provide Sparks where he would not be required to bend and stoop and lift, or where he would not at times have to lift weights totaling more than thirty pounds. This was supported by photographs taken in the normal course of operations, showing the plating department where Sparks worked, typical work procedure necessary for men in the plating department and the heavy nature of part of the work required.

It will be noticed that the September 16, 1957, statement of Sparks' physician that "Mr. James Sparks is now able to return to his former duties without danger to himself or to others," makes no specific findings resulting from an examination subsequent to August 14, 1957, does not attempt to explain why the 25 per cent permanent disability existing on August 14, 1957, no longer existed, and in fact does not state that the 25 per cent permanent disability does not still exist. The statement that Sparks could return to work "without danger to himself or to others" falls far short of saying that he could return to his former

position with "ability and efficiency" equal to that of other employees, which is necessary in order for him to claim his seniority rights under Article XIV. In fact, considered in the light of the allegations of the complaint as amended in the Workmen's Compensation case, the kind of work Sparks would be required to do, and the findings in the three physical examinations made of Sparks during the preceding thirty-three days, it is so lacking in probative value with respect to the issue in this case as to compel the conclusion that the so-called claim or grievance is a frivolous, patently baseless one, not subject to arbitration under the collective bargaining agreement between the parties.

The judgment of the District Court is affirmed.

JUDGMENT

Appeal from the United States District Court for the Eastern District of Tennessee.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

ORDER DENYING REHEARING

Appellant's petition for rehearing having been considered by the Court,

IT IS ORDERED that said petition be denied.

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 360.

UNITED STEELWORKERS OF AMERICA,

Petitioner,

vs.

AMERICAN MANUFACTURING COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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TABLE OF CONTENTS.

TABLE OF CASES.

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ON PETITION FOR WRIT OF CERTIORARI
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FOR THE SIXTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

(A) QUESTION PRESENTED FOR REVIEW.

Where the Union acting for a Company's former employee brings an action under Section 301 of the Labor Management Relations Act to compel arbitration of an alleged grievance, and the question is submitted to the District Court by motion for summary judgment, can the Union properly call on this Court to review the matter because of the dismissal of the action as not subject to arbitration, affirmed by the Court of Appeals on the grounds that the alleged grievance was frivolous and patently baseless?

(B) STATEMENT OF THE CASE.

This controversy stems from the action of an employee in obtaining Workmen's Compensation benefits for permanent disability and then seeking seniority employment benefits on the basis that he was not disabled.

Petitioner, United Steelworkers of America (hereinafter called the Union), brought the original action in the United States District Court in Chattanooga, Tennessee, against American Manufacturing Company (hereinafter called the Company). The suit was on behalf of James D. Sparks, a member of the Union, seeking to compel arbitration of an alleged grievance against the Company. Subsequent to the filing of the answer to the complaint, the Union filed a Motion for Summary Judgment asking that the Court decide the questions presented "as a matter of law." (R. 45a.) That portion of the record which was taken from the appendices to the Briefs filed by the parties in the Court of Appeals is paginated in the manner in which the appendices were paginated: pages taken from the Appellant's appendix being numbered 1a to 61a, and pages from the Appellee's appendix being numbered 1b to 29b. Various affidavits and exhibits were filed, and the Respondent, as defendant in the proceeding, in connection with its Brief moved the Court for Summary Judgment in its behalf, there stating in writing: "Defendant requests Summary Judgment in its behalf." (R. 21b.) The Union member, James Sparks, had obtained a Workmen's Compensation award from the Circuit Court of Hamilton County, Tennessee, and a payment of something more than Three Thousand ($3,000) Dollars for permanent disability by reason of accidental injury arising out of and in the course of his employment. In his petition in that Court proceeding by which he obtained that award, Sparks alleged that his "usual employment (R. 32a) included the type of work of lifting large and heavy frames and required him to get in awkward or strained positions." (R. 37a.) In bringing about that settlement and in obtaining the Court order, James Sparks, through his attorney, submitted the signed statement of Dr. Warren Kimsey, dated August 14, 1957 (R.

17b), in which Dr. Kimsey stated: "I believe his disability was 55% or 60% before surgery and I believe it is approximately 25% at the present time. I also believe that his partial permanent disability will remain at about 25%." (R. 19b.)

On August 14, 1957, Dr. Kimsey had also advised Mr. Alexander, the Company's plant superintendent, that Sparks "cannot lift over 30 pounds of weight." (R. 3b.)

In the Workmen's Compensation suit, James Sparks was represented by the same Chattanooga attorneys (R. 33a) who as local counsel appeared as attorneys for the complainant in this present suit as originally filed in the United States District Court in Chattanooga. (R. 24a.)

On September 9, 1957, the Court award of compensation for permanent disability of the body as a whole was approved (R. 44a), this being an adjudication by that Court in a lump sum based on twenty-five (25%) percent permanent disability. (R. 43a; R. 18b.)

One week later, on September 16, 1957, Sparks sought to return to work at his regular job (R. 23a). He or someone for him had obtained from Dr. Kimsey a "To Whom it May Concern statement" that "Mr. James Sparks is now able to return to his former duties without danger to himself or to others." (R. 53a.) The next week the Union filed a grievance report alleging violation of seniority provisions "by not allowing James Sparks to return to work at his regular job * * * since his release on September 16, 1957." (R. 23a.)

Subsequently, the attorney who had represented the Company in the Workmen's Compensation proceeding, after learning that Mr. Sparks had asked to be returned to his regular job, wrote to Mr. Sparks with a copy to his attorney. In that letter he requested a conference inasmuch as Sparks' claim of capability to do the work was

inconsistent with his position taken shortly before in the compensation case that he was permanently disabled. (R. 18b).

On November 14, 1957, Dr. George W. Shelton (examining by consent of both parties) found no change in the twenty-five (25%) percent permanent disability of the body as a whole, and stated "it is my opinion that he should not be placed on work requiring heavy lifting or prolonged stooping or bending." (R. 16b).

The Company's business is comparatively small. It has no work to provide Sparks where he will not be required to bend and stoop and lift and where he will not at times have to lift weights totaling more than thirty pounds. (R. 5b.) In part, because of the peculiar nature of its operations, and in order to protect and safeguard the individual employee and also his fellow employees from the hazards involved in working over and about vats and tanks containing acids and chemicals (R. 5b and 9b-11b), it had been agreed as a part of the Collective Bargaining Agreement that the management of the works and the hiring and discharge of employees was "reserved to the Company." (R. 7a.) In that provision (Article II of the Agreement) the mutual emphasis on protection of fellow employees and the efficiency of the plant operation is apparent.

The Seniority Article (R. 13a) on which the Union based its grievance and suit, recognizes the principle that it will apply "where ability and efficiency are equal." (R. 13a.)

The Honorable Leslie R. Darr as the United States District Judge hearing the matter, found "that all the facts are within the record and there is no dispute pertaining thereto. Therefore, the case is a proper one for action under the Motion for Summary Judgment." (R. 57a.)

Both the Union and the Company having moved for Summary Judgments, the District Court found that the Union had failed to make out a case requiring the Court to compel arbitration. (R. 57a.) The Court of Appeals has arrived at the same conclusion by a somewhat different path, but reaching the same result to the effect that the "so-called claim or grievance is a frivolous, patently baseless one, not subject to arbitration under the Collective Bargaining Agreement between the parties." (Part of next to the last sentence of the Opinion of the Court of Appeals, *United Steelworkers of America v. American Manufacturing Co.*, 264 F. 2d, 624 at 628.)

(C) REASONS WHY THE WRIT SHOULD BE DENIED.

I. THE SIXTH CIRCUIT DECISION IS NOT IN CONFLICT WITH THOSE OF OTHER CIRCUITS.

The Union seeks specific performance of the Arbitration Clause of the Collective Bargaining Agreement as to a matter which has been found both by the District Court and by the Court of Appeals to be patently baseless. It is true that the Court of Appeals in affirming did not fully follow the lower Court's reasoning; but both Courts found that the Union's claim was baseless.

Both the District Court and the Court of Appeals found that the complaint should be dismissed.

The Union now contends that this decision on the part of the Sixth Circuit is in direct conflict with the decision of the First Circuit in *New Bedford Defense Products Division v. Local No. 1113 U. A. W.*, 258 F. 2d 522 (1st Cir. 1958). However, the decision of the Sixth Circuit is directly in accord with the said First Circuit's holdings. In the *New Bedford* case Judge Magruder, in the course of the opinion, specifically refers to, and in effect

incorporates the reasoning of the earlier decision of that same Circuit (*Local 205, etc. v. General Electric Company* (1st Cir. 1956) 233 F. 2d 85) in which he had written the earlier opinion. Referring to this earlier case that Court said in effect that the *New Bedford* decision was not intended to be contrary to the earlier decision. 258 F. 2d at 526, 527. In that earlier case the same Court in an Opinion written by the same Judge specifically stated that even where the contract in suit puts the matter of arbitrability into the hands of the arbitrator, the Court can give an order requiring arbitration only if "the applicant's claim of arbitrability is not frivolous or patently baseless." 233 F. 2d at 101. It is, therefore, of more than minor significance that these are exactly the same words used by the Court of Appeals in this present case, in which the Sixth Circuit held that the so-called claim or grievance is a frivolous, patently baseless one, not subject to arbitration under the Collective Bargaining Agreement between the parties. 264 F. 2d at 628.

Therefore, it appears that the decision in this case does not actually conflict with the decisions of the Courts of other Circuits, and that this is not a case of conflict between Circuit Courts of Appeal. Certiorari is not suggested by any of the standards formulated by this Court and its Rules relating to Writs of Certiorari.

II. THIS CASE PRESENTS NO UNSETTLED QUESTION OF FEDERAL LAW.

This particular case does not present any unsettled questions of Federal law. The Union simply brought an action demanding that the District Court use its extraordinary powers to compel arbitration of an unjust, frivolous and patently baseless alleged grievance. Under the disclosures pursuant to the Summary Judgment pro-

cedure, first invoked by the complainant and then by the defendant, the true nature of the complaint was disclosed and the Court properly dismissed the action. In *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U. S. 448, in the opinion of the Court written by Mr. Justice Douglas, the Court referred to the legislative history of Section 301, and quoted from the statement in the Conference Report that: "The enforcement of that contract should be left to the usual processes of the law * * *." (353 U. S. at p. 452.) Likewise, in the concurring opinion of Mr. Justice Burton and Mr. Justice Harlan, Mr. Justice Burton said: "The power to decree specific performance of a collectively bargained agreement to arbitrate finds its source in Section 301 itself, and in a Federal District Court's inherent equitable powers, nurtured by a congressional policy to encourage and enforce labor arbitration in industries affecting commerce." 353 U. S. at p. 460.

In the present case the usual processes of the law were followed. Surely neither the Union nor management would have the Courts attach unusual modifications of the Summary Judgment procedures to apply only to cases arising under Section 301, to compel arbitration. The fact is that the Union itself first invoked the Summary Judgment procedure in this case, and it should not now complain that, upon its being invoked by the defendant, the District Court dismissed the action upon the Union's failure to make out a case upon which relief could be granted.

It has long been and we believe still is the Federal Rule of Law as stated in the first headnote of *Ohio v. Helvering*, 292 U. S. 360, that the question of the Court's power to grant injunctive relief need not be considered where the case is not one in which the complainant is entitled to such relief.

III. THE DECISION BELOW IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT.

We respectfully submit that the decision of the Court of Appeals in the present case does not conflict with the decision of this Court in the *Lincoln Mills* case. That case did not establish any right to the abuse of our National Labor Laws. The decision of the Court of Appeals and of the District Court in the present case is not in any way adverse to "the policy of our National Labor Laws."

The power given to the Court to compel arbitration is in the nature of affirmative injunctive relief. It is a drastic right, which under our American system, must be used with judicial wisdom.

It was not the intent or purpose of the Court in the *Lincoln Mills* case, or in any other case, to establish a rule that the Court must blindly compel the parties to submit to arbitration in every complaint filed in the Court demanding such action. If no legal restraint were possible, a ruthless or belligerent leader, whether representing management or labor, could easily abuse the right and subject an adverse party to unjust publicity and substantial and unnecessary expense. By simply claiming or feigning a grievance and bringing an action in the District Court, an unscrupulous party could obtain publicity entirely unfair to the adversary, and under a ruling such as the Union here contends for, could compel submission to considerable inconvenience and to possible great loss in time of witnesses and expense of arbitration.

Such is not our American way. An important foundation stone of our judicial system is that which not only gives the Court the right to consider, but requires the Court to consider every case. Especially is this important with respect to an action seeking action in the nature of an injunction. It must be both the privilege and the obli-

gation of the Court to determine whether there is a reasonable cause or base for the action and for the relief sought.

The Union cites and quotes from a number of District Court and other cases. However, these must be considered in the light of the record in, and decision of, the Court of Appeals in the present case. The action here was one of those inequitable and baseless proceedings which should never have been brought. The Court of Appeals correctly affirmed the action of the District Court in dismissing the action. Under these circumstances, the cases cited and quoted from by the Union fail to support the Union and do not represent any entrenched rule of law. They do not conflict with the judgment here under review. The case meets none of the tests which this Court customarily applies to determine whether certiorari will be granted.

Respondent submits that there is no reason to grant the petition and that it should be denied.

Respectfully submitted,

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